

[DISCUSSION DRAFT]

1 **TITLE XIII—ENERGY TAX** 2 **INCENTIVES**

3 **SEC. 1300. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) **SHORT TITLE.**—This title may be cited as the
5 “Energy Tax Policy Act of 2005”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this title an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference
10 shall be considered to be made to a section or other provi-
11 sion of the Internal Revenue Code of 1986.

12 **Subtitle A—Conservation**

13 **PART I—RESIDENTIAL AND BUSINESS PROPERTY**

14 **SEC. 1301. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT** 15 **PROPERTY.**

16 (a) **IN GENERAL.**—Subpart A of part IV of sub-
17 chapter A of chapter 1 (relating to nonrefundable personal
18 credits) is amended by inserting after section 25B the fol-
19 lowing new section:

20 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

21 “(a) **ALLOWANCE OF CREDIT.**—In the case of an in-
22 dividual, there shall be allowed as a credit against the tax



1 imposed by this chapter for the taxable year an amount
2 equal to the sum of—

3 “(1) 15 percent of the qualified solar water
4 heating property expenditures made by the taxpayer
5 during such year,

6 “(2) 15 percent of the qualified photovoltaic
7 property expenditures made by the taxpayer during
8 such year,

9 “(3) 15 percent of the qualified wind energy
10 property expenditures made by the taxpayer during
11 such year, and

12 “(4) 20 percent of the qualified fuel cell prop-
13 erty expenditures made by the taxpayer during such
14 year.

15 “(b) LIMITATIONS.—

16 “(1) MAXIMUM CREDIT.—

17 “(A) IN GENERAL.—The credit allowed
18 under subsection (a) shall not exceed—

19 “(i) \$2,000 for property described in
20 paragraph (1), (2), or (3) of subsection
21 (c), and

22 “(ii) \$500 for each 0.5 kilowatt of ca-
23 pacity of property described in subsection
24 (c)(4).



1 “(B) PRIOR EXPENDITURES BY TAXPAYER
2 ON SAME RESIDENCE TAKEN INTO ACCOUNT.—

3 In determining the amount of the credit allowed
4 to a taxpayer with respect to any dwelling unit
5 under this section, the dollar amount under
6 subparagraph (A)(i) with respect to each type
7 of property described in such subparagraph
8 shall be reduced by the credit allowed to the
9 taxpayer under this section with respect to such
10 property for all preceding taxable years with re-
11 spect to such dwelling unit.

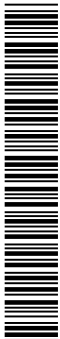
12 “(2) PROPERTY STANDARDS.—No credit shall
13 be allowed under this section for an item of property
14 unless—

15 “(A) the original use of such property com-
16 mences with the taxpayer,

17 “(B) such property reasonably can be ex-
18 pected to remain in use for at least 5 years,

19 “(C) such property is installed on or in
20 connection with a dwelling unit located in the
21 United States and used as a residence by the
22 taxpayer,

23 “(D) in the case of solar water heating
24 property, such property is certified for perform-
25 ance by the non-profit Solar Rating and Certifi-



1 cation Corporation or a comparable entity en-
2 dorsed by the government of the State in which
3 such property is installed,

4 “(E) in the case of fuel cell property, such
5 property meets the performance and quality
6 standards (if any) which have been prescribed
7 by the Secretary by regulations (after consulta-
8 tion with the Secretary of Energy), and

9 “(F) in the case of any photovoltaic prop-
10 erty, fuel cell property, or wind energy property,
11 such property meets appropriate fire and elec-
12 tric code requirements.

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) QUALIFIED SOLAR WATER HEATING PROP-
15 erty expenditure.—The term ‘qualified solar
16 water heating property expenditure’ means an ex-
17 penditure for property which uses solar energy to
18 heat water for use in a dwelling unit.

19 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-
20 penditure.—The term ‘qualified photovoltaic prop-
21 erty expenditure’ means an expenditure for property
22 which uses solar energy to generate electricity for
23 use in a dwelling unit and which is not described in
24 paragraph (1).



1 “(3) QUALIFIED WIND ENERGY PROPERTY EX-
2 PENDITURE.—The term ‘qualified wind energy prop-
3 erty expenditure’ means an expenditure for property
4 which uses wind energy to generate electricity for
5 use in a dwelling unit.

6 “(4) QUALIFIED FUEL CELL PROPERTY EX-
7 PENDITURE.—The term ‘qualified fuel cell property
8 expenditure’ means an expenditure for any qualified
9 fuel cell property (as defined in section 48(c)(1)).

10 “(d) SPECIAL RULES.—For purposes of this
11 section—

12 “(1) SOLAR PANELS.—No expenditure relating
13 to a solar panel or other property installed as a roof
14 (or portion thereof) shall fail to be treated as prop-
15 erty described in paragraph (1) or (2) of subsection
16 (c) solely because it constitutes a structural compo-
17 nent of the structure on which it is installed.

18 “(2) SWIMMING POOLS, ETC., USED AS STOR-
19 AGE MEDIUM.—Expenditures which are properly al-
20 locable to a swimming pool, hot tub, or any other
21 energy storage medium which has a function other
22 than the function of such storage shall not be taken
23 into account for purposes of this section.

24 “(3) DOLLAR AMOUNTS IN CASE OF JOINT OC-
25 CUPANCY.—In the case of any dwelling unit which is

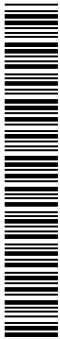


1 jointly occupied and used during any calendar year
2 as a residence by 2 or more individuals, the fol-
3 lowing rules shall apply:

4 “(A) The amount of the credit allowable
5 under subsection (a) by reason of expenditures
6 made during such calendar year by any of such
7 individuals with respect to such dwelling unit
8 shall be determined by treating all of such indi-
9 viduals as 1 taxpayer whose taxable year is
10 such calendar year.

11 “(B) There shall be allowable, with respect
12 to such expenditures to each of such individ-
13 uals, a credit under subsection (a) for the tax-
14 able year in which such calendar year ends in
15 an amount which bears the same ratio to the
16 amount determined under subparagraph (A) as
17 the amount of such expenditures made by such
18 individual during such calendar year bears to
19 the aggregate of such expenditures made by all
20 of such individuals during such calendar year.

21 “(C) Subparagraphs (A) and (B) shall be
22 applied separately with respect to expenditures
23 described in paragraphs (1), (2), (3), and (4) of
24 subsection (c).



1 “(4) TENANT-STOCKHOLDER IN COOPERATIVE
2 HOUSING CORPORATION.—In the case of an indi-
3 vidual who is a tenant-stockholder (as defined in sec-
4 tion 216) in a cooperative housing corporation (as
5 defined in such section), such individual shall be
6 treated as having made the individual’s tenant-stock-
7 holder’s proportionate share (as defined in section
8 216(b)(3)) of any expenditures of such corporation.

9 “(5) CONDOMINIUMS.—

10 “(A) IN GENERAL.—In the case of an indi-
11 vidual who is a member of a condominium man-
12 agement association with respect to a condo-
13 minium which the individual owns, such indi-
14 vidual shall be treated as having made the indi-
15 vidual’s proportionate share of any expenditures
16 of such association.

17 “(B) CONDOMINIUM MANAGEMENT ASSO-
18 CIATION.—For purposes of this paragraph, the
19 term ‘condominium management association’
20 means an organization which meets the require-
21 ments of paragraph (1) of section 528(c) (other
22 than subparagraph (E) thereof) with respect to
23 a condominium project substantially all of the
24 units of which are used as residences.



1 “(6) ALLOCATION IN CERTAIN CASES.—Except
2 in the case of qualified wind energy property expend-
3 itures, if less than 80 percent of the use of an item
4 is for nonbusiness purposes, only that portion of the
5 expenditures for such item which is properly allo-
6 cable to use for nonbusiness purposes shall be taken
7 into account.

8 “(7) WHEN EXPENDITURE MADE; AMOUNT OF
9 EXPENDITURE.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), an expenditure with respect
12 to an item shall be treated as made when the
13 original installation of the item is completed.

14 “(B) EXPENDITURES PART OF BUILDING
15 CONSTRUCTION.—In the case of an expenditure
16 in connection with the construction or recon-
17 struction of a structure, such expenditure shall
18 be treated as made when the original use of the
19 constructed or reconstructed structure by the
20 taxpayer begins.

21 “(C) AMOUNT.—The amount of any ex-
22 penditure shall be the cost thereof.

23 “(8) PROPERTY FINANCED BY SUBSIDIZED EN-
24 ERGY FINANCING.—For purposes of determining the
25 amount of expenditures made by any individual with



1 respect to any dwelling unit, there shall not be taken
2 into account expenditures which are made from sub-
3 sidized energy financing (as defined in section
4 48(a)(4)(C)).

5 “(9) DENIAL OF DEPRECIATION ON WIND EN-
6 ERGY PROPERTY FOR WHICH CREDIT ALLOWED.—
7 No deduction shall be allowed under section 167 for
8 property which uses wind energy to generate elec-
9 tricity if the taxpayer is allowed a credit under this
10 section with respect to such property.

11 “(e) BASIS ADJUSTMENTS.—For purposes of this
12 subtitle, if a credit is allowed under this section for any
13 expenditure with respect to any property, the increase in
14 the basis of such property which would (but for this sub-
15 section) result from such expenditure shall be reduced by
16 the amount of the credit so allowed.

17 “(f) TERMINATION.—The credit allowed under this
18 section shall not apply to taxable years beginning after
19 December 31, 2006 (December 31, 2008, with respect to
20 qualified photovoltaic property expenditures).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 1016(a) is amended by striking
23 “and” at the end of paragraph (27), by striking the
24 period at the end of paragraph (28) and inserting “,



1 and”, and by adding at the end the following new
2 paragraph:

3 “(29) to the extent provided in section 25C(e),
4 in the case of amounts with respect to which a credit
5 has been allowed under section 25C.”.

6 (2) The table of sections for subpart A of part
7 IV of subchapter A of chapter 1 is amended by in-
8 serting after the item relating to section 25B the fol-
9 lowing new item:

“Sec. 25C. Residential energy efficient property.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years ending after De-
12 cember 31, 2005.

13 **SEC. 1302. EXTENSION AND EXPANSION OF CREDIT FOR**
14 **ELECTRICITY PRODUCED FROM CERTAIN RE-**
15 **NEWABLE RESOURCES.**

16 (a) REENACTMENT OF SECTION 313 OF WORKING
17 FAMILIES TAX RELIEF ACT OF 2004.—Paragraphs (1),
18 (2)(A)(i), and (3)(A) of section 45(d)(3) are each amend-
19 ed by striking “January 1, 2006” and inserting “January
20 1, 2006”.

21 (b) REENACTMENT OF SECTION 710 OF THE AMER-
22 ICAN JOBS CREATION ACT OF 2004.—

23 (1) EXPANSION OF QUALIFIED ENERGY RE-
24 SOURCES.—Subsection (c) of section 45 (relating to



1 electricity produced from certain renewable re-
2 sources) is amended to read as follows:

3 “(c) QUALIFIED ENERGY RESOURCES AND REFINED
4 COAL.—For purposes of this section:

5 “(1) IN GENERAL.—The term ‘qualified energy
6 resources’ means—

7 “(A) wind,

8 “(B) closed-loop biomass,

9 “(C) open-loop biomass,

10 “(D) geothermal energy,

11 “(E) solar energy,

12 “(F) small irrigation power, and

13 “(G) municipal solid waste.

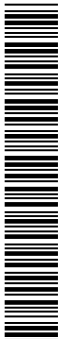
14 “(2) CLOSED-LOOP BIOMASS.—The term
15 ‘closed-loop biomass’ means any organic material
16 from a plant which is planted exclusively for pur-
17 poses of being used at a qualified facility to produce
18 electricity.

19 “(3) OPEN-LOOP BIOMASS.—

20 “(A) IN GENERAL.—The term ‘open-loop
21 biomass’ means—

22 “(i) any agricultural livestock waste
23 nutrients, or

24 “(ii) any solid, nonhazardous, cel-
25 lulosic waste material which is segregated



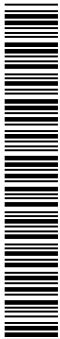
1 from other waste materials and which is
2 derived from—

3 “(I) any of the following forest-
4 related resources: mill and harvesting
5 residues, precommercial thinnings,
6 slash, and brush,

7 “(II) solid wood waste materials,
8 including waste pallets, crates,
9 dunnage, manufacturing and con-
10 struction wood wastes (other than
11 pressure-treated, chemically-treated,
12 or painted wood wastes), and land-
13 scape or right-of-way tree trimmings,
14 but not including municipal solid
15 waste, gas derived from the bio-
16 degradation of solid waste, or paper
17 which is commonly recycled, or

18 “(III) agriculture sources, includ-
19 ing orchard tree crops, vineyard,
20 grain, legumes, sugar, and other crop
21 by-products or residues.

22 Such term shall not include closed-loop biomass
23 or biomass burned in conjunction with fossil
24 fuel (cofiring) beyond such fossil fuel required
25 for startup and flame stabilization.



1 “(B) AGRICULTURAL LIVESTOCK WASTE
2 NUTRIENTS.—

3 “(i) IN GENERAL.—The term ‘agricul-
4 tural livestock waste nutrients’ means agri-
5 cultural livestock manure and litter, includ-
6 ing wood shavings, straw, rice hulls, and
7 other bedding material for the disposition
8 of manure.

9 “(ii) AGRICULTURAL LIVESTOCK.—
10 The term ‘agricultural livestock’ includes
11 bovine, swine, poultry, and sheep.

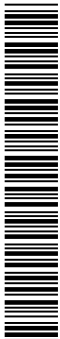
12 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
13 thermal energy’ means energy derived from a geo-
14 thermal deposit (within the meaning of section
15 613(e)(2)).

16 “(5) SMALL IRRIGATION POWER.—The term
17 ‘small irrigation power’ means power—

18 “(A) generated without any dam or im-
19 poundment of water through an irrigation sys-
20 tem canal or ditch, and

21 “(B) the nameplate capacity rating of
22 which is not less than 150 kilowatts but is less
23 than 5 megawatts.

24 “(6) MUNICIPAL SOLID WASTE.—The term
25 ‘municipal solid waste’ has the meaning given the



1 term ‘solid waste’ under section 2(27) of the Solid
2 Waste Disposal Act (42 U.S.C. 6903).

3 “(7) REFINED COAL.—

4 “(A) IN GENERAL.—The term ‘refined
5 coal’ means a fuel which—

6 “(i) is a liquid, gaseous, or solid syn-
7 thetic fuel produced from coal (including
8 lignite) or high carbon fly ash, including
9 such fuel used as a feedstock,

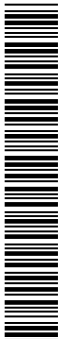
10 “(ii) is sold by the taxpayer with the
11 reasonable expectation that it will be used
12 for purpose of producing steam,

13 “(iii) is certified by the taxpayer as
14 resulting (when used in the production of
15 steam) in a qualified emission reduction,
16 and

17 “(iv) is produced in such a manner as
18 to result in an increase of at least 50 per-
19 cent in the market value of the refined coal
20 (excluding any increase caused by mate-
21 rials combined or added during the produc-
22 tion process), as compared to the value of
23 the feedstock coal.

24 “(B) QUALIFIED EMISSION REDUCTION.—

25 The term ‘qualified emission reduction’ means a



1 reduction of at least 20 percent of the emissions
2 of nitrogen oxide and either sulfur dioxide or
3 mercury released when burning the refined coal
4 (excluding any dilution caused by materials
5 combined or added during the production proc-
6 ess), as compared to the emissions released
7 when burning the feedstock coal or comparable
8 coal predominantly available in the marketplace
9 as of January 1, 2003.”.

10 (2) Subsection (d) of section 45 is amended to
11 read as follows:

12 “(d) QUALIFIED FACILITIES.—For purposes of this
13 section—

14 “(1) WIND FACILITY.—In the case of a facility
15 using wind to produce electricity, the term ‘qualified
16 facility’ means any facility owned by the taxpayer
17 which is originally placed in service after December
18 31, 1993, and before January 1, 2006.

19 “(2) CLOSED-LOOP BIOMASS FACILITY.—

20 “(A) IN GENERAL.—In the case of a facil-
21 ity using closed-loop biomass to produce elec-
22 tricity, the term ‘qualified facility’ means any
23 facility—



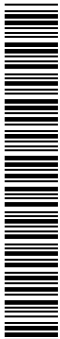
1 “(i) owned by the taxpayer which is
2 originally placed in service after December
3 31, 1992, and before January 1, 2006, or

4 “(ii) owned by the taxpayer which be-
5 fore January 1, 2006, is originally placed
6 in service and modified to use closed-loop
7 biomass to co-fire with coal, with other bio-
8 mass, or with both, but only if the modi-
9 fication is approved under the Biomass
10 Power for Rural Development Programs or
11 is part of a pilot project of the Commodity
12 Credit Corporation as described in 65 Fed.
13 Reg. 63052.

14 “(B) SPECIAL RULES.—In the case of a
15 qualified facility described in subparagraph
16 (A)(ii)—

17 “(i) the 10-year period referred to in
18 subsection (a) shall be treated as beginning
19 no earlier than the date of the enactment
20 of the American Jobs Creation Act of
21 2004,

22 “(ii) the amount of the credit deter-
23 mined under subsection (a) with respect to
24 the facility shall be an amount equal to the
25 amount determined without regard to this



1 clause multiplied by the ratio of the ther-
2 mal content of the closed-loop biomass
3 used in such facility to the thermal content
4 of all fuels used in such facility, and

5 “(iii) if the owner of such facility is
6 not the producer of the electricity, the per-
7 son eligible for the credit allowable under
8 subsection (a) shall be the lessee or the op-
9 erator of such facility.

10 “(3) OPEN-LOOP BIOMASS FACILITIES.—

11 “(A) IN GENERAL.—In the case of a facil-
12 ity using open-loop biomass to produce elec-
13 tricity, the term ‘qualified facility’ means any
14 facility owned by the taxpayer which—

15 “(i) in the case of a facility using ag-
16 ricultural livestock waste nutrients—

17 “(I) is originally placed in service
18 after the date of the enactment of the
19 American Jobs Creation Act of 2004
20 and before January 1, 2006, and

21 “(II) the nameplate capacity rat-
22 ing of which is not less than 150 kilo-
23 watts, and



1 “(ii) in the case of any other facility,
2 is originally placed in service before Janu-
3 ary 1, 2006.

4 “(B) CREDIT ELIGIBILITY.—In the case of
5 any facility described in subparagraph (A), if
6 the owner of such facility is not the producer of
7 the electricity, the person eligible for the credit
8 allowable under subsection (a) shall be the les-
9 see or the operator of such facility.

10 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-
11 ITY.—In the case of a facility using geothermal or
12 solar energy to produce electricity, the term ‘quali-
13 fied facility’ means any facility owned by the tax-
14 payer which is originally placed in service after the
15 date of the enactment of the American Jobs Cre-
16 ation Act of 2004 and before January 1, 2006. Such
17 term shall not include any property described in sec-
18 tion 48(a)(3) the basis of which is taken into ac-
19 count by the taxpayer for purposes of determining
20 the energy credit under section 48.

21 “(5) SMALL IRRIGATION POWER FACILITY.—In
22 the case of a facility using small irrigation power to
23 produce electricity, the term ‘qualified facility’
24 means any facility owned by the taxpayer which is
25 originally placed in service after the date of the en-



1 actment of the American Jobs Creation Act of 2004
2 and before January 1, 2006.

3 “(6) LANDFILL GAS FACILITIES.—In the case
4 of a facility producing electricity from gas derived
5 from the biodegradation of municipal solid waste,
6 the term ‘qualified facility’ means any facility owned
7 by the taxpayer which is originally placed in service
8 after the date of the enactment of the American
9 Jobs Creation Act of 2004 and before January 1,
10 2006.

11 “(7) TRASH COMBUSTION FACILITIES.—In the
12 case of a facility which burns municipal solid waste
13 to produce electricity, the term ‘qualified facility’
14 means any facility owned by the taxpayer which is
15 originally placed in service after the date of the en-
16 actment of the American Jobs Creation Act of 2004
17 and before January 1, 2006.

18 “(8) REFINED COAL PRODUCTION FACILITY.—
19 The term ‘refined coal production facility’ means a
20 facility which is placed in service after the date of
21 the enactment of the American Jobs Creation Act of
22 2004 and before January 1, 2009.”.

23 (3) Paragraph (8) of subsection (e) of section
24 45 is amended to read as follows:



1 “(8) REFINED COAL PRODUCTION FACILI-
2 TIES.—

3 “(A) DETERMINATION OF CREDIT
4 AMOUNT.—In the case of a producer of refined
5 coal, the credit determined under this section
6 (without regard to this paragraph) for any tax-
7 able year shall be increased by an amount equal
8 to \$4.375 per ton of qualified refined coal—

9 “(i) produced by the taxpayer at a re-
10 fined coal production facility during the
11 10-year period beginning on the date the
12 facility was originally placed in service, and

13 “(ii) sold by the taxpayer—

14 “(I) to an unrelated person, and

15 “(II) during such 10-year period
16 and such taxable year.

17 “(B) PHASEOUT OF CREDIT.—The amount
18 of the increase determined under subparagraph
19 (A) shall be reduced by an amount which bears
20 the same ratio to the amount of the increase
21 (determined without regard to this subpara-
22 graph) as—

23 “(i) the amount by which the ref-
24 erence price of fuel used as a feedstock
25 (within the meaning of subsection



1 (c)(7)(A)) for the calendar year in which
2 the sale occurs exceeds an amount equal to
3 1.7 multiplied by the reference price for
4 such fuel in 2002, bears to
5 “(ii) \$8.75.

6 “(C) APPLICATION OF RULES.—Rules
7 similar to the rules of the subsection (b)(3) and
8 paragraphs (1) through (5) and (9) of this sub-
9 section shall apply for purposes of determining
10 the amount of any increase under this para-
11 graph.”.

12 (4) Paragraph (4) of section 45(b) is amended
13 to read as follows:

14 “(4) CREDIT RATE AND PERIOD FOR ELEC-
15 TRICITY PRODUCED AND SOLD FROM CERTAIN FA-
16 CILITIES.—

17 “(A) CREDIT RATE.—In the case of elec-
18 tricity produced and sold in any calendar year
19 after 2003 at any qualified facility described in
20 paragraph (3), (5), (6), or (7) of subsection (d),
21 the amount in effect under subsection (a)(1) for
22 such calendar year (determined before the ap-
23 plication of the last sentence of paragraph (2)
24 of this subsection) shall be reduced by one-half.

25 “(B) CREDIT PERIOD.—

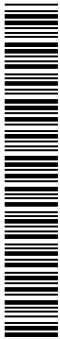


1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), in the case of any facil-
3 ity described in paragraph (3), (4), (5),
4 (6), or (7) of subsection (d), the 5-year pe-
5 riod beginning on the date the facility was
6 originally placed in service shall be sub-
7 stituted for the 10-year period in sub-
8 section (a)(2)(A)(ii).

9 “(ii) CERTAIN OPEN-LOOP BIOMASS
10 FACILITIES.—In the case of any facility de-
11 scribed in subsection (d)(3)(A)(ii) placed in
12 service before the date of the enactment of
13 this paragraph, the 5-year period begin-
14 ning on the date of the enactment of this
15 Act shall be substituted for the 10-year pe-
16 riod in subsection (a)(2)(A)(ii).”.

17 (5) Paragraph (9) of section 45(e) is amended
18 to read as follows:

19 “(9) COORDINATION WITH CREDIT FOR PRO-
20 DUCING FUEL FROM A NONCONVENTIONAL
21 SOURCE.—The term ‘qualified facility’ shall not in-
22 clude any facility the production from which is al-
23 lowed as a credit under section 29 for the taxable
24 year or any prior taxable year.”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect as if included in the amend-
3 ments made by section 710 of the American Jobs Creation
4 Act of 2004.

5 **SEC. 1303. CREDIT FOR BUSINESS INSTALLATION OF**
6 **QUALIFIED FUEL CELLS.**

7 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
8 ergy property) is amended by striking “or” at the end of
9 clause (i), by adding “or” at the end of clause (ii), and
10 by inserting after clause (ii) the following new clause:

11 “(iii) qualified fuel cell property,”.

12 (b) QUALIFIED FUEL CELL PROPERTY.—Section 48
13 (relating to energy credit; reforestation credit) is amended
14 by adding at the end the following new subsection:

15 “(c) QUALIFIED FUEL CELL PROPERTY.—For pur-
16 poses of subsection (a)(3)(A)(iii)—

17 “(1) IN GENERAL.—The term ‘qualified fuel
18 cell property’ means a fuel cell power plant which
19 generates at least 0.5 kilowatt of electricity using an
20 electrochemical process.

21 “(2) LIMITATION.—The energy credit with re-
22 spect to any qualified fuel cell property shall not ex-
23 ceed an amount equal to \$500 for each 0.5 kilowatt
24 of capacity of such property.



1 “(3) FUEL CELL POWER PLANT.—The term
2 ‘fuel cell power plant’ means an integrated system,
3 comprised of a fuel cell stack assembly and associ-
4 ated balance of plant components, which converts a
5 fuel into electricity using electrochemical means.

6 “(4) TERMINATION.—The term ‘qualified fuel
7 cell property’ shall not include any property placed
8 in service after December 31, 2006.”.

9 (c) ENERGY PERCENTAGE.—Subparagraph (A) of
10 section 48(a)(2) (relating to energy percentage) is amend-
11 ed to read as follows:

12 “(A) IN GENERAL.—The energy percent-
13 age is—

14 “(i) in the case of qualified fuel cell
15 property, 20 percent, and

16 “(ii) in the case of any other energy
17 property, 10 percent.”.

18 (d) CONFORMING AMENDMENT.—Section 48(a)(1) is
19 amended by inserting “except as provided in subsection
20 (c)(2),” before “the energy”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to periods after December 31,
23 2005, under rules similar to the rules of section 48(m)
24 of the Internal Revenue Code of 1986 (as in effect on the



1 day before the date of the enactment of the Revenue Rec-
2 onciliation Act of 1990).

3 **SEC. 1304. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**
4 **MENTS TO EXISTING HOMES.**

5 (a) IN GENERAL.—Subpart A of part IV of sub-
6 chapter A of chapter 1 (relating to nonrefundable personal
7 credits), as amended by this Act, is amended by inserting
8 after section 25C the following new section:

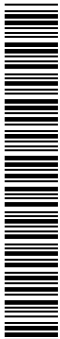
9 **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**
10 **ING HOMES.**

11 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
12 dividual, there shall be allowed as a credit against the tax
13 imposed by this chapter for the taxable year an amount
14 equal to 20 percent of the amount paid or incurred by
15 the taxpayer for qualified energy efficiency improvements
16 installed during such taxable year.

17 “(b) LIMITATIONS.—

18 “(1) MAXIMUM CREDIT.—The credit allowed by
19 this section with respect to a dwelling unit shall not
20 exceed \$2,000.

21 “(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER
22 ON SAME DWELLING TAKEN INTO ACCOUNT.—If a
23 credit was allowed to the taxpayer under subsection
24 (a) with respect to a dwelling unit in 1 or more prior
25 taxable years, the amount of the credit otherwise al-



1 lowable for the taxable year with respect to that
2 dwelling unit shall be reduced by the sum of the
3 credits allowed under subsection (a) to the taxpayer
4 with respect to the dwelling unit for all prior taxable
5 years.

6 “(c) QUALIFIED ENERGY EFFICIENCY IMPROVE-
7 MENTS.—For purposes of this section, the term ‘qualified
8 energy efficiency improvements’ means any energy effi-
9 cient building envelope component which meets the pre-
10 scriptive criteria for such component established by the
11 2000 International Energy Conservation Code, as such
12 Code (including supplements) is in effect on the date of
13 the enactment of this section (or, in the case of a metal
14 roof with appropriate pigmented coatings which meet the
15 Energy Star program requirements), if—

16 “(1) such component is installed in or on a
17 dwelling unit—

18 “(A) located in the United States,

19 “(B) owned and used by the taxpayer as
20 the taxpayer’s principal residence (within the
21 meaning of section 121), and

22 “(C) which has not been treated as a
23 qualified new energy efficient home for pur-
24 poses of any credit allowed under section 45G,



1 “(2) the original use of such component com-
2 mences with the taxpayer, and

3 “(3) such component reasonably can be ex-
4 pected to remain in use for at least 5 years.

5 If the aggregate cost of such components with respect to
6 any dwelling unit exceeds \$1,000, such components shall
7 be treated as qualified energy efficiency improvements
8 only if such components are also certified in accordance
9 with subsection (d) as meeting such prescriptive criteria.

10 “(d) CERTIFICATION.—The certification described in
11 subsection (c) shall be—

12 “(1) determined on the basis of the technical
13 specifications or applicable ratings (including prod-
14 uct labeling requirements) for the measurement of
15 energy efficiency (based upon energy use or building
16 envelope component performance) for the energy ef-
17 ficient building envelope component,

18 “(2) provided by a local building regulatory au-
19 thority, a utility, a manufactured home production
20 inspection primary inspection agency (IPLA), or an
21 accredited home energy rating system provider who
22 is accredited by or otherwise authorized to use ap-
23 proved energy performance measurement methods by
24 the Residential Energy Services Network
25 (RESNET), and



1 “(3) made in writing in a manner which speci-
2 fies in readily verifiable fashion the energy efficient
3 building envelope components installed and their re-
4 spective energy efficiency levels.

5 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
6 poses of this section—

7 “(1) BUILDING ENVELOPE COMPONENT.—The
8 term ‘building envelope component’ means—

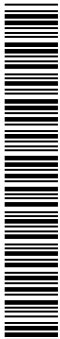
9 “(A) any insulation material or system
10 which is specifically and primarily designed to
11 reduce the heat loss or gain of a dwelling unit
12 when installed in or on such dwelling unit,

13 “(B) exterior windows (including sky-
14 lights),

15 “(C) exterior doors, and

16 “(D) any metal roof installed on a dwelling
17 unit, but only if such roof has appropriate pig-
18 mented coatings which are specifically and pri-
19 marily designed to reduce the heat gain of such
20 dwelling unit.

21 “(2) MANUFACTURED HOMES INCLUDED.—The
22 term ‘dwelling unit’ includes a manufactured home
23 which conforms to Federal Manufactured Home
24 Construction and Safety Standards (section 3280 of
25 title 24, Code of Federal Regulations).



1 “(3) APPLICATION OF RULES.—Rules similar to
2 the rules under paragraphs (3), (4), and (5) of sec-
3 tion 25C(d) shall apply.

4 “(f) BASIS ADJUSTMENT.—For purposes of this sub-
5 title, if a credit is allowed under this section for any ex-
6 penditure with respect to any property, the increase in the
7 basis of such property which would (but for this sub-
8 section) result from such expenditure shall be reduced by
9 the amount of the credit so allowed.

10 “(g) APPLICATION OF SECTION.—This section shall
11 apply to qualified energy efficiency improvements installed
12 after December 31, 2005, and before January 1, 2007.”.

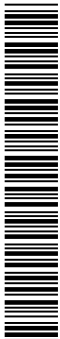
13 (b) CONFORMING AMENDMENTS.—

14 (1) Subsection (a) of section 1016, as amended
15 by this Act, is amended by striking “and” at the end
16 of paragraph (28), by striking the period at the end
17 of paragraph (29) and inserting “, and”, and by
18 adding at the end the following new paragraph:

19 “(30) to the extent provided in section 25D(f),
20 in the case of amounts with respect to which a credit
21 has been allowed under section 25D.”.

22 (2) The table of sections for subpart A of part
23 IV of subchapter A of chapter 1, as amended by this
24 Act, is amended by inserting after the item relating
25 to section 25C the following new item:

 “Sec. 25D. Energy efficiency improvements to existing homes.”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after De-
3 cember 31, 2005.

4 **SEC. 1305. CREDIT FOR CONSTRUCTION OF NEW ENERGY**
5 **EFFICIENT HOMES.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-
7 chapter A of chapter 1 (relating to business related cred-
8 its) is amended by adding at the end the following new
9 section:

10 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

11 “(a) IN GENERAL.—For purposes of section 38, in
12 the case of an eligible contractor with respect to a quali-
13 fied new energy efficient home, the credit determined
14 under this section for the taxable year with respect to such
15 home is an amount equal to the aggregate adjusted bases
16 of all energy efficient property installed in such home dur-
17 ing construction of such home.

18 “(b) LIMITATIONS.—

19 “(1) MAXIMUM CREDIT.—

20 “(A) IN GENERAL.—The credit allowed by
21 this section with respect to a dwelling unit shall
22 not exceed—

23 “(i) in the case of a dwelling unit de-
24 scribed in clause (i) or (iii) of subsection
25 (c)(3)(D), \$1,000, and



1 “(ii) in the case of a dwelling unit de-
2 scribed in subsection (c)(3)(D)(ii), \$2,000.

3 “(B) PRIOR CREDIT AMOUNTS ON SAME
4 DWELLING UNIT TAKEN INTO ACCOUNT.—If a
5 credit was allowed under subsection (a) with re-
6 spect to a dwelling unit in 1 or more prior tax-
7 able years, the amount of the credit otherwise
8 allowable for the taxable year with respect to
9 such dwelling unit shall be reduced by the sum
10 of the credits allowed under subsection (a) with
11 respect to the dwelling unit for all prior taxable
12 years.

13 “(2) COORDINATION WITH CERTAIN CREDITS.—
14 For purposes of this section—

15 “(A) the basis of any property referred to
16 in subsection (a) shall be reduced by that por-
17 tion of the basis of any property which is attrib-
18 utable to qualified rehabilitation expenditures
19 (as defined in section 47(c)(2)) or to the energy
20 percentage of energy property (as determined
21 under section 48(a)), and

22 “(B) expenditures taken into account
23 under section 47 or 48(a) shall not be taken
24 into account under this section.

25 “(c) DEFINITIONS.—For purposes of this section—



1 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
2 ble contractor’ means—

3 “(A) the person who constructed the quali-
4 fied new energy efficient home, or

5 “(B) in the case of a qualified new energy
6 efficient home which is a manufactured home,
7 the manufactured home producer of such home.
8 If more than 1 person is described in subparagraph
9 (A) or (B) with respect to any qualified new energy
10 efficient home, such term means the person des-
11 ignated as such by the owner of such home.

12 “(2) ENERGY EFFICIENT PROPERTY.—The
13 term ‘energy efficient property’ means any energy
14 efficient building envelope component, and any en-
15 ergy efficient heating or cooling equipment or sys-
16 tem, which can, individually or in combination with
17 other components, result in a dwelling unit meeting
18 the requirements of this section.

19 “(3) QUALIFIED NEW ENERGY EFFICIENT
20 HOME.—The term ‘qualified new energy efficient
21 home’ means a dwelling unit—

22 “(A) located in the United States,

23 “(B) the construction of which is substan-
24 tially completed after December 31, 2005,



1 “(C) the original use of which, after such
2 construction, is reasonably expected to be as a
3 residence by the person who acquires such
4 dwelling unit from the eligible contractor,

5 “(D) which is—

6 “(i) certified to have a level of annual
7 heating and cooling energy consumption
8 which is at least 30 percent below the an-
9 nual level of heating and cooling energy
10 consumption of a comparable dwelling unit
11 constructed in accordance with the stand-
12 ards of chapter 4 of the 2000 International
13 Energy Conservation Code, as such Code
14 (including supplements) is in effect on the
15 date of the enactment of this section, and
16 to have building envelope component im-
17 provements account for at least $\frac{1}{3}$ of such
18 30 percent,

19 “(ii) certified to have a level of annual
20 heating and cooling energy consumption
21 which is at least 50 percent below such an-
22 nual level and to have building envelope
23 component improvements account for at
24 least $\frac{1}{5}$ of such 50 percent, or

25 “(iii) a manufactured home which—



1 “(I) conforms to Federal Manu-
2 factured Home Construction and
3 Safety Standards (section 3280 of
4 title 24, Code of Federal Regulations),
5 and

6 “(II) meets the applicable stand-
7 ards required by the Administrator of
8 the Environmental Protection Agency
9 under the Energy Star Labeled
10 Homes program.

11 “(4) CONSTRUCTION.—The term ‘construction’
12 includes substantial reconstruction and rehabilita-
13 tion.

14 “(5) ACQUIRE.—The term ‘acquire’ includes
15 purchase and, in the case of reconstruction and re-
16 habilitation, such term includes a binding written
17 contract for such reconstruction or rehabilitation.

18 “(6) BUILDING ENVELOPE COMPONENT.—The
19 term ‘building envelope component’ means—

20 “(A) any insulation material or system
21 which is specifically and primarily designed to
22 reduce the heat loss or gain of a dwelling unit
23 when installed in or on such dwelling unit,

24 “(B) exterior windows (including sky-
25 lights),



1 “(C) exterior doors, and

2 “(D) any metal roof installed on a dwelling
3 unit, but only if such roof has appropriate pig-
4 mented coatings which—

5 “(i) are specifically and primarily de-
6 signed to reduce the heat gain of such
7 dwelling unit, and

8 “(ii) meet the Energy Star program
9 requirements.

10 “(d) CERTIFICATION.—

11 “(1) METHOD OF CERTIFICATION.—A certifi-
12 cation described in subsection (c)(3)(D) shall be de-
13 termined in accordance with guidance prescribed by
14 the Secretary. Such guidance shall specify proce-
15 dures and methods for calculating energy and cost
16 savings.

17 “(2) FORM.—A certification described in sub-
18 section (c)(3)(D) shall be made in writing—

19 “(A) in a manner which specifies in readily
20 verifiable fashion the energy efficient building
21 envelope components and energy efficient heat-
22 ing or cooling equipment installed and their re-
23 spective rated energy efficiency performance,
24 and



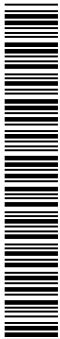
1 “(B) in the case of a qualified new energy
2 efficient home which is a manufactured home,
3 accompanied by such documentation as required
4 by the Administrator of the Environmental Pro-
5 tection Agency under the Energy Star Labeled
6 Homes program.

7 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
8 title, if a credit is determined under this section for any
9 expenditure with respect to any property, the increase in
10 the basis of such property which would (but for this sub-
11 section) result from such expenditure shall be reduced by
12 the amount of the credit so determined.

13 “(f) APPLICATION OF SECTION.—Subsection (a) shall
14 apply to qualified new energy efficient homes acquired
15 during the period beginning on January 1, 2005, and end-
16 ing on December 31, 2007.”.

17 (b) CREDIT MADE PART OF GENERAL BUSINESS
18 CREDIT.—Section 38(b) (relating to current year business
19 credit) is amended by striking “plus” at the end of para-
20 graph (14), by striking the period at the end of paragraph
21 (15) and inserting “, plus”, and by adding at the end the
22 following new paragraph:

23 “(16) the new energy efficient home credit de-
24 termined under section 45G(a).”.



1 (c) BASIS ADJUSTMENT.—Subsection (a) of section
2 1016, as amended by this Act, is amended by striking
3 “and” at the end of paragraph (29), by striking the period
4 at the end of paragraph (30) and inserting “, and”, and
5 by adding at the end the following new paragraph:

6 “(31) to the extent provided in section 45G(e),
7 in the case of amounts with respect to which a credit
8 has been allowed under section 45G.”.

9 (d) LIMITATION ON CARRYBACK.—

10 (1) IN GENERAL.—Subsection (d) of section 39
11 is amended to read as follows:

12 “(d) TRANSITIONAL RULE.—No portion of the un-
13 used business credit for any taxable year which is attrib-
14 utable to a credit specified in section 38(b) or any portion
15 thereof may be carried back to any taxable year before
16 the first taxable year for which such specified credit or
17 such portion is allowable (without regard to subsection
18 (a)).”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall apply with respect to taxable
21 years ending after December 31, 2004.

22 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
23 CREDITS.—Section 196(c) (defining qualified business
24 credits) is amended by striking “and” at the end of para-
25 graph (10), by striking the period at the end of paragraph



1 (11) and inserting “, and”, and by adding after paragraph
2 (11) the following new paragraph:

3 “(12) the new energy efficient home credit de-
4 termined under section 45G(a).”.

5 (f) CLERICAL AMENDMENT.—The table of sections
6 for subpart D of part IV of subchapter A of chapter 1
7 is amended by adding at the end the following new item:
“Sec. 45G. New energy efficient home credit.”.

8 (g) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years ending after De-
10 cember 31, 2005.

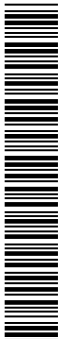
11 **SEC. 1306. ENERGY CREDIT FOR COMBINED HEAT AND**
12 **POWER SYSTEM PROPERTY.**

13 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
14 ergy property), as amended by this Act, is amended by
15 striking “or” at the end of clause (ii), by adding “or” at
16 the end of clause (iii), and by inserting after clause (iii)
17 the following new clause:

18 “(iv) combined heat and power system
19 property,”.

20 (b) COMBINED HEAT AND POWER SYSTEM PROP-
21 erty.—Section 48 (relating to energy credit; reforestation
22 credit), as amended by this Act, is amended by adding
23 at the end the following new subsection:

24 “(d) COMBINED HEAT AND POWER SYSTEM PROP-
25 erty.—For purposes of subsection (a)(3)(A)(iv)—



1 “(1) COMBINED HEAT AND POWER SYSTEM
2 PROPERTY.—The term ‘combined heat and power
3 system property’ means property comprising a
4 system—

5 “(A) which uses the same energy source
6 for the simultaneous or sequential generation of
7 electrical power, mechanical shaft power, or
8 both, in combination with the generation of
9 steam or other forms of useful thermal energy
10 (including heating and cooling applications),

11 “(B) which has an electrical capacity of
12 not more than 15 megawatts or a mechanical
13 energy capacity of not more than 2,000 horse-
14 power or an equivalent combination of electrical
15 and mechanical energy capacities,

16 “(C) which produces—

17 “(i) at least 20 percent of its total
18 useful energy in the form of thermal en-
19 ergy which is not used to produce electrical
20 or mechanical power (or combination
21 thereof), and

22 “(ii) at least 20 percent of its total
23 useful energy in the form of electrical or
24 mechanical power (or combination thereof),



1 “(D) the energy efficiency percentage of
2 which exceeds 60 percent, and

3 “(E) which is placed in service before Jan-
4 uary 1, 2007.

5 “(2) SPECIAL RULES.—

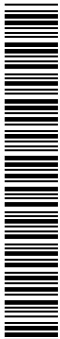
6 “(A) ENERGY EFFICIENCY PERCENT-
7 AGE.—For purposes of this subsection, the en-
8 ergy efficiency percentage of a system is the
9 fraction—

10 “(i) the numerator of which is the
11 total useful electrical, thermal, and me-
12 chanical power produced by the system at
13 normal operating rates, and expected to be
14 consumed in its normal application, and

15 “(ii) the denominator of which is the
16 lower heating value of the fuel sources for
17 the system.

18 “(B) DETERMINATIONS MADE ON BTU
19 BASIS.—The energy efficiency percentage and
20 the percentages under paragraph (1)(C) shall
21 be determined on a Btu basis.

22 “(C) INPUT AND OUTPUT PROPERTY NOT
23 INCLUDED.—The term ‘combined heat and
24 power system property’ does not include prop-
25 erty used to transport the energy source to the



1 facility or to distribute energy produced by the
2 facility.

3 “(D) PUBLIC UTILITY PROPERTY.—

4 “(i) ACCOUNTING RULE FOR PUBLIC
5 UTILITY PROPERTY.—If the combined heat
6 and power system property is public utility
7 property (as defined in section 168(i)(10)),
8 the taxpayer may only claim the credit
9 under subsection (a) if, with respect to
10 such property, the taxpayer uses a normal-
11 ization method of accounting.

12 “(ii) CERTAIN EXCEPTION NOT TO
13 APPLY.—The matter in subsection (a)(3)
14 which follows subparagraph (D) thereof
15 shall not apply to combined heat and
16 power system property.

17 “(3) SYSTEMS USING BAGASSE.—If a system is
18 designed to use bagasse for at least 90 percent of
19 the energy source—

20 “(A) paragraph (1)(D) shall not apply, but

21 “(B) the amount of credit determined
22 under subsection (a) with respect to such sys-
23 tem shall not exceed the amount which bears
24 the same ratio to such amount of credit (deter-
25 mined without regard to this paragraph) as the



1 energy efficiency percentage of such system
2 bears to 60 percent.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this subsection shall apply to periods after December 31,
5 2005, in taxable years ending after such date, under rules
6 similar to the rules of section 48(m) of the Internal Rev-
7 enue Code of 1986 (as in effect on the day before the date
8 of the enactment of the Revenue Reconciliation Act of
9 1990).

10 **SEC. 1307. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

11 (a) IN GENERAL.—Subpart D of part IV of sub-
12 chapter A of chapter 1 (relating to business-related cred-
13 its), as amended by this Act, is amended by adding at
14 the end the following new section:

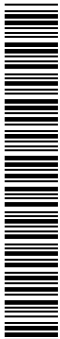
15 **“SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.**

16 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-
17 tion 38, the energy efficient appliance credit determined
18 under this section for the taxable year is an amount equal
19 to the sum of—

20 “(1) the tier I appliance amount, and

21 “(2) the tier II appliance amount,

22 with respect to qualified energy efficient appliances pro-
23 duced by the taxpayer during the calendar year ending
24 with or within the taxable year.



1 “(b) APPLIANCE AMOUNTS.—For purposes of sub-
2 section (a)—

3 “(1) TIER I APPLIANCE AMOUNT.—The tier I
4 appliance amount is equal to—

5 “(A) \$100, multiplied by

6 “(B) an amount (rounded to the nearest
7 whole number) equal to the applicable percent-
8 age of the eligible production.

9 “(2) TIER II APPLIANCE AMOUNT.—The tier II
10 appliance amount is equal to \$150, multiplied by an
11 amount equal to the eligible production reduced by
12 the amount determined under paragraph (1)(B).

13 “(3) APPLICABLE PERCENTAGE.—The applica-
14 ble percentage is the percentage determined by di-
15 viding the tier I appliances produced by the taxpayer
16 during the calendar year by the sum of the tier I
17 and tier II appliances so produced.

18 “(4) ELIGIBLE PRODUCTION.—The eligible pro-
19 duction of qualified energy efficient appliances by
20 the taxpayer for any calendar year is the excess of—

21 “(A) the number of such appliances which
22 are produced by the taxpayer during such cal-
23 endar year, over

24 “(B) 110 percent of the average annual
25 number of such appliances which were produced



1 by the taxpayer (or any predecessor) during the
2 preceding 3-calendar year period.

3 “(c) QUALIFIED ENERGY EFFICIENT APPLIANCE.—

4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘qualified energy
6 efficient appliance’ means any tier I appliance or tier
7 II appliance which is produced in the United States.

8 “(2) TIER I APPLIANCE.—The term ‘tier I ap-
9 pliance’ means—

10 “(A) a clothes washer which is produced
11 with at least a 1.50 MEF, and

12 “(B) a refrigerator which consumes at
13 least 15 percent (20 percent in the case of a re-
14 frigerator produced after 2006) less kilowatt
15 hours per year than the energy conservation
16 standards for refrigerators promulgated by the
17 Department of Energy and effective on July 1,
18 2001.

19 “(3) TIER II APPLIANCE.—The term ‘tier II ap-
20 pliance’ means a refrigerator produced before 2007
21 which consumes at least 20 percent less kilowatt
22 hours per year than the energy conservation stand-
23 ards described in paragraph (2)(B).



1 “(4) CLOTHES WASHER.—The term ‘clothes
2 washer’ means a residential clothes washer, includ-
3 ing a residential style coin operated washer.

4 “(5) REFRIGERATOR.—The term ‘refrigerator’
5 means an automatic defrost refrigerator-freezer
6 which has an internal volume of at least 16.5 cubic
7 feet.

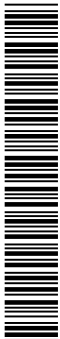
8 “(6) MEF.—The term ‘MEF’ means Modified
9 Energy Factor (as determined by the Secretary of
10 Energy).

11 “(7) PRODUCED.—The term ‘produced’ in-
12 cludes manufactured.

13 “(d) LIMITATION ON MAXIMUM CREDIT.—

14 “(1) IN GENERAL.—The amount of credit al-
15 lowed under subsection (a) with respect to a tax-
16 payer for any taxable year shall not exceed
17 \$60,000,000, reduced by the amount of the credit
18 allowed under subsection (a) to the taxpayer (or any
19 predecessor) for any prior taxable year.

20 “(2) LIMITATION BASED ON GROSS RE-
21 CEIPTS.—The credit allowed under subsection (a)
22 with respect to a taxpayer for the taxable year shall
23 not exceed an amount equal to 2 percent of the aver-
24 age annual gross receipts of the taxpayer for the 3



1 taxable years preceding the taxable year for which
2 the credit is determined.

3 “(3) GROSS RECEIPTS.—For purposes of this
4 subsection, the rules of paragraphs (2) and (3) of
5 section 448(c) shall apply.

6 “(e) SPECIAL RULES.—For purposes of this
7 section—

8 “(1) IN GENERAL.—Rules similar to the rules
9 of subsections (c), (d), and (e) of section 52 shall
10 apply.

11 “(2) CONTROLLED GROUPS.—

12 “(A) IN GENERAL.—All persons treated as
13 a single employer under subsection (a) or (b) of
14 section 52 or subsection (m) or (o) of section
15 414 shall be treated as a single manufacturer.

16 “(B) INCLUSION OF FOREIGN CORPORA-
17 TIONS.—For purposes of subparagraph (A), in
18 applying subsections (a) and (b) of section 52
19 to this section, section 1563 shall be applied
20 without regard to subsection (b)(2)(C) thereof.

21 “(f) VERIFICATION.—The taxpayer shall submit such
22 information or certification as the Secretary, after con-
23 sultation with the Secretary of Energy, determines nec-
24 essary to claim the credit amount under subsection (a).



1 “(g) TERMINATION.—This section shall not apply
2 with respect to appliances produced after December 31,
3 2007.”.

4 (b) CREDIT MADE PART OF GENERAL BUSINESS
5 CREDIT.—Section 38(b) (relating to current year business
6 credit), as amended by this Act, is amended by striking
7 “plus” at the end of paragraph (15), by striking the period
8 at the end of paragraph (16) and inserting “, plus”, and
9 by adding at the end the following new paragraph:

10 “(17) the energy efficient appliance credit de-
11 termined under section 45H(a).”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for subpart D of part IV of subchapter A of chapter 1,
14 as amended by this Act, is amended by adding at the end
15 the following new item:

“Sec. 45H. Energy efficient appliance credit.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to appliances produced after De-
18 cember 31, 2005, in taxable years ending after such date.

19 **SEC. 1308. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
20 **DEDUCTION.**

21 (a) IN GENERAL.—Part VI of subchapter B of chap-
22 ter 1 (relating to itemized deductions for individuals and
23 corporations) is amended by inserting after section 179A
24 the following new section:



1 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
2 **DEDUCTION.**

3 “(a) IN GENERAL.—There shall be allowed as a de-
4 duction an amount equal to the cost of energy efficient
5 commercial building property placed in service during the
6 taxable year.

7 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The de-
8 duction under subsection (a) with respect to any building
9 for the taxable year and all prior taxable years shall not
10 exceed an amount equal to the product of—

11 “(1) \$1.50, and

12 “(2) the square footage of the building.

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) ENERGY EFFICIENT COMMERCIAL BUILD-
15 ING PROPERTY.—The term ‘energy efficient commer-
16 cial building property’ means property—

17 “(A) which is installed on or in a
18 building—

19 “(i) which is located in the United
20 States, and

21 “(ii) which is the type of structure to
22 which the Standard 90.1–2001 is applica-
23 ble,

24 “(B) which is installed as part of—

25 “(i) the lighting systems,



1 “(ii) the heating, cooling, ventilation,
2 and hot water systems, or

3 “(iii) the building envelope, and

4 “(C) which is certified in accordance with
5 subsection (d)(4) as being installed as part of
6 a plan designed to reduce the total annual en-
7 ergy and power costs with respect to the light-
8 ing systems, heating, cooling, ventilation, and
9 hot water systems of the building by 50 percent
10 or more in comparison to a reference building
11 which meets the minimum requirements of
12 Standard 90.1–2001 using methods of calcula-
13 tion under subsection (d)(2).

14 “(2) STANDARD 90.1–2001.—The term ‘Stand-
15 ard 90.1–2001’ means Standard 90.1–2001 of the
16 American Society of Heating, Refrigerating, and Air
17 Conditioning Engineers and the Illuminating Engi-
18 neering Society of North America (as in effect on
19 April 2, 2003).

20 “(d) SPECIAL RULES.—

21 “(1) PARTIAL ALLOWANCE.—

22 “(A) IN GENERAL.—Except as provided in
23 subsection (f), in the case of a building placed
24 in service on or before the date of the enact-
25 ment of this section, if—



1 “(i) the requirement of subsection
2 (c)(1)(C) is not met, but

3 “(ii) there is a certification in accord-
4 ance with subsection (d)(4) that any sys-
5 tem referred to in subsection (c)(1)(B) sat-
6 isfies the energy-savings targets estab-
7 lished by the Secretary under subpara-
8 graph (B) with respect to such system,
9 then the requirement of subsection (c)(1)(C)
10 shall be treated as met with respect to such sys-
11 tem, and the deduction under subsection (a)
12 shall be allowed with respect to energy efficient
13 commercial building property installed as part
14 of such system and as part of a plan to meet
15 such targets, except that subsection (b) shall be
16 applied to such property by substituting ‘\$.50’
17 for ‘\$1.50’.

18 “(B) REGULATIONS.—The Secretary, after
19 consultation with the Secretary of Energy, shall
20 establish a target for each system described in
21 subsection (c)(1)(B) which, if such targets were
22 met for all such systems, the building would
23 meet the requirements of subsection (c)(1)(C).

24 “(2) METHODS OF CALCULATION.—The Sec-
25 retary, after consultation with the Secretary of En-



1 ergy, shall promulgate regulations which describe in
2 detail methods for calculating and verifying energy
3 and power cost for purposes of this section.

4 “(3) NOTICE TO OWNER.—Each certification
5 required under this section shall include an expla-
6 nation to the building owner regarding the energy
7 efficiency features of the building and its projected
8 annual energy costs.

9 “(4) CERTIFICATION.—

10 “(A) IN GENERAL.—The Secretary shall
11 prescribe the manner and method for the mak-
12 ing of certifications under this section.

13 “(B) PROCEDURES.—The Secretary shall
14 include as part of the certification process pro-
15 cedures for inspection and testing by qualified
16 individuals described in subparagraph (C) to
17 ensure compliance of buildings with energy-sav-
18 ings plans and targets. Such procedures shall
19 be—

20 “(i) comparable, given the difference
21 between commercial and residential build-
22 ings, to the requirements in the Mortgage
23 Industry National Accreditation Proce-
24 dures for Home Energy Rating Systems,
25 and



1 “(ii) fuel neutral such that the same
2 energy efficiency measures allow a building
3 to be eligible for the deduction under this
4 section regardless of whether such building
5 uses a gas or oil furnace or boiler, an elec-
6 tric heat pump, or other fuel source.

7 “(C) QUALIFIED INDIVIDUALS.—Individ-
8 uals qualified to determine compliance shall be
9 only those individuals who are recognized by an
10 organization certified by the Secretary for such
11 purposes.

12 “(e) BASIS REDUCTION.—For purposes of this sub-
13 title, if a deduction is allowed under this section with re-
14 spect to any energy efficient commercial building property,
15 the basis of such property shall be reduced by the amount
16 of the deduction so allowed.

17 “(f) INTERIM RULES FOR LIGHTING SYSTEMS.—
18 Until such time as the Secretary issues final regulations
19 under subsection (d)(1)(B) with respect to property which
20 is part of a lighting system—

21 “(1) IN GENERAL.—The lighting system target
22 under subsection (d)(1)(A)(ii) shall be a reduction in
23 lighting power density of 25 percent (50 percent in
24 the case of a warehouse) of the minimum require-
25 ments in Table 9.3.1.1 or Table 9.3.1.2 (not includ-



1 ing additional interior lighting power allowances) of
2 Standard 90.1–2001.

3 “(2) REDUCTION IN DEDUCTION IF REDUCTION
4 LESS THAN 40 PERCENT.—

5 “(A) IN GENERAL.—If, with respect to the
6 lighting system of any building other than a
7 warehouse, the reduction in lighting power den-
8 sity of the lighting system is not at least 40
9 percent, only the applicable percentage of the
10 amount of deduction otherwise allowable under
11 this section with respect to such property shall
12 be allowed.

13 “(B) APPLICABLE PERCENTAGE.—For
14 purposes of subparagraph (A), the applicable
15 percentage is the number of percentage points
16 (not greater than 100) equal to the sum of—

17 “(i) 50, and

18 “(ii) the amount which bears the same
19 ratio to 50 as the excess of the reduction
20 of lighting power density of the lighting
21 system over 25 percentage points bears to
22 15.

23 “(C) EXCEPTIONS.—This subsection shall
24 not apply to any system—



1 “(i) the controls and circuiting of
2 which do not comply fully with the manda-
3 tory and prescriptive requirements of
4 Standard 90.1–2001 and which do not in-
5 clude provision for bilevel switching in all
6 occupancies except hotel and motel guest
7 rooms, store rooms, restrooms, and public
8 lobbies, or

9 “(ii) which does not meet the min-
10 imum requirements for calculated lighting
11 levels as set forth in the Illuminating Engi-
12 neering Society of North America Lighting
13 Handbook, Performance and Application,
14 Ninth Edition, 2000.

15 “(g) REGULATIONS.—The Secretary shall promul-
16 gate such regulations as necessary—

17 “(1) to take into account new technologies re-
18 garding energy efficiency and renewable energy for
19 purposes of determining energy efficiency and sav-
20 ings under this section, and

21 “(2) to provide for a recapture of the deduction
22 allowed under this section if the plan described in
23 subsection (c)(1)(C) or (d)(1)(A) is not fully imple-
24 mented.



1 “(h) TERMINATION.—This section shall not apply
2 with respect to property placed in service after December
3 31, 2007.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 1016(a), as amended by this sec-
6 tion, is amended by striking “and” at the end of
7 paragraph (30), by striking the period at the end of
8 paragraph (31) and inserting “, and”, and by add-
9 ing at the end the following new paragraph:

10 “(32) to the extent provided in section
11 179B(e).”.

12 (2) Section 1245(a) is amended by inserting
13 “179B,” after “179A,” both places it appears in
14 paragraphs (2)(C) and (3)(C).

15 (3) Section 1250(b)(3) is amended by inserting
16 before the period at the end of the first sentence “or
17 by section 179B”.

18 (4) Section 263(a)(1) is amended by striking
19 “or” at the end of subparagraph (G), by striking the
20 period at the end of subparagraph (H) and inserting
21 “, or”, and by inserting after subparagraph (H) the
22 following new subparagraph:

23 “(I) expenditures for which a deduction is
24 allowed under section 179B.”.



1 (5) Section 312(k)(3)(B) is amended by strik-
2 ing “or 179A” each place it appears in the heading
3 and text and inserting “, 179A, or 179B”.

4 (c) CLERICAL AMENDMENT.—The table of sections
5 for part VI of subchapter B of chapter 1 is amended by
6 inserting after section 179A the following new item:

“Sec. 179B. Energy efficient commercial buildings deduction.”.

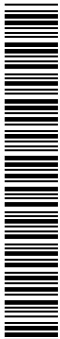
7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to property placed in service after
9 the date of the enactment of this Act in taxable years end-
10 ing after such date.

11 **SEC. 1309. THREE-YEAR APPLICABLE RECOVERY PERIOD**
12 **FOR DEPRECIATION OF QUALIFIED ENERGY**
13 **MANAGEMENT DEVICES.**

14 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
15 year property) is amended by striking “and” at the end
16 of clause (ii), by striking the period at the end of clause
17 (iii) and inserting “, and”, and by adding at the end the
18 following new clause:

19 “(iv) any qualified energy manage-
20 ment device.”.

21 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-
22 MENT DEVICE.—Section 168(i) (relating to definitions
23 and special rules) is amended by inserting at the end the
24 following new paragraph:



1 “(15) QUALIFIED ENERGY MANAGEMENT DE-
2 VICE.—

3 “(A) IN GENERAL.—The term ‘qualified
4 energy management device’ means any energy
5 management device which is placed in service
6 before January 1, 2008, by a taxpayer who is
7 a supplier of electric energy or a provider of
8 electric energy services.

9 “(B) ENERGY MANAGEMENT DEVICE.—
10 For purposes of subparagraph (A), the term
11 ‘energy management device’ means any meter
12 or metering device which is used by the
13 taxpayer—

14 “(i) to measure and record electricity
15 usage data on a time-differentiated basis
16 in at least 4 separate time segments per
17 day, and

18 “(ii) to provide such data on at least
19 a monthly basis to both consumers and the
20 taxpayer.”.

21 (c) ALTERNATIVE SYSTEM.—The table contained in
22 section 168(g)(3)(B) is amended by inserting after the
23 item relating to subparagraph (A)(iii) the following:

 “(A) (iv) 20”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to property placed in service after



1 the date of the enactment of this Act, in taxable years
2 ending after such date.

3 **SEC. 1310. CREDIT FOR PRODUCTION FROM ADVANCED NU-**
4 **CLEAR POWER FACILITIES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 (relating to business related cred-
7 its), as amended by this Act, is amended by adding after
8 section 45K the following new section:

9 **“SEC. 45L. CREDIT FOR PRODUCTION FROM ADVANCED NU-**
10 **CLEAR POWER FACILITIES.**

11 “(a) GENERAL RULE.—For purposes of section 38,
12 the advanced nuclear power facility production credit of
13 any taxpayer for any taxable year is equal to the product
14 of—

15 “(1) 1.8 cents, multiplied by

16 “(2) the kilowatt hours of electricity—

17 “(A) produced by the taxpayer at an ad-
18 vanced nuclear power facility during the 8-year
19 period beginning on the date the facility was
20 originally placed in service, and

21 “(B) sold by the taxpayer to an unrelated
22 person during the taxable year.

23 “(b) NATIONAL LIMITATION.—

24 “(1) IN GENERAL.—The amount of credit
25 which would (but for this subsection and subsection



1 (c)) be allowed with respect to any facility for any
2 taxable year shall not exceed the amount which
3 bears the same ratio to such amount of credit as—

4 “(A) the national megawatt capacity limi-
5 tation allocated to the facility, bears to

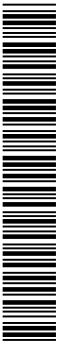
6 “(B) the total megawatt nameplate capac-
7 ity of such facility.

8 “(2) AMOUNT OF NATIONAL LIMITATION.—The
9 national megawatt capacity limitation shall be 6,000
10 megawatts.

11 “(3) ALLOCATION OF LIMITATION.—The Sec-
12 retary shall allocate the national megawatt capacity
13 limitation in such manner as the Secretary may pre-
14 scribe.

15 “(4) REGULATIONS.—Not later than 6 months
16 after the date of the enactment of this section, the
17 Secretary shall prescribe such regulations as may be
18 necessary or appropriate to carry out the purposes
19 of this subsection. Such regulations shall provide a
20 certification process under which the Secretary, after
21 consultation with the Secretary of Energy, shall ap-
22 prove and allocate the national megawatt capacity
23 limitation.

24 “(c) OTHER LIMITATIONS.—



1 “(1) ANNUAL LIMITATION.—The amount of the
2 credit allowable under subsection (a) (after the ap-
3 plication of subsection (b)) for any taxable year with
4 respect to any facility shall not exceed an amount
5 which bears the same ratio to \$125,000,000 as—

6 “(A) the national megawatt capacity limi-
7 tation allocated under subsection (b) to the fa-
8 cility, bears to

9 “(B) 1,000.

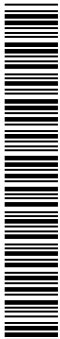
10 “(2) OTHER LIMITATIONS.—Rules similar to
11 the rules of section 45(b) shall apply for purposes of
12 this section, except that paragraph (2) thereof shall
13 not apply to the 1.8 cents under subsection (a)(1).

14 “(d) ADVANCED NUCLEAR POWER FACILITY.—For
15 purposes of this section—

16 “(1) IN GENERAL.—The term ‘advanced nu-
17 clear power facility’ means any advanced nuclear
18 facility—

19 “(A) which is owned by the taxpayer and
20 which uses nuclear energy to produce elec-
21 tricity, and

22 “(B) which is placed in service after the
23 date of the enactment of this paragraph and be-
24 fore January 1, 2021.



1 “(2) ADVANCED NUCLEAR FACILITY.—For pur-
2 poses of paragraph (1), the term ‘advanced nuclear
3 facility’ means any nuclear facility the reactor design
4 for which is approved after the date of the enact-
5 ment of this paragraph by the Nuclear Regulatory
6 Commission (and such design or a substantially
7 similar design of comparable capacity was not ap-
8 proved on or before such date).

9 “(e) OTHER RULES TO APPLY.—Rules similar to the
10 rules of paragraphs (1), (2), (3), (4), and (5) of section
11 45(e) shall apply for purposes of this section.”.

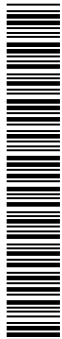
12 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
13 tion 38(b), as amended by this Act, is amended by striking
14 “plus” at the end of paragraph (20), by striking the period
15 at the end of paragraph (21) and inserting “, plus”, and
16 by adding at the end the following:

17 “(22) the advanced nuclear power facility pro-
18 duction credit determined under section 45L(a).”.

19 (c) CLERICAL AMENDMENT.—The table of sections
20 for subpart D of part IV of subchapter A of chapter 1,
21 as amended by this Act, is amended by adding at the end
22 the following:

 “Sec. 45L. Credit for production from advanced nuclear power facilities.”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to production in taxable years be-
25 ginning after December 31, 2006.



1 **PART II—FUELS AND ALTERNATIVE MOTOR**
2 **VEHICLES**
3 **SEC. 1311. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE**
4 **TAXES ON RAILROADS AND INLAND WATER-**
5 **WAY TRANSPORTATION WHICH REMAIN IN**
6 **GENERAL FUND.**

 [Note: Enacted by section 241 of the American Jobs
Creation Act of 2004]

7 **SEC. 1312. REDUCED MOTOR FUEL EXCISE TAX ON CER-**
8 **TAIN MIXTURES OF DIESEL FUEL.**

9 (a) IN GENERAL.—Paragraph (2) of section 4081(a)
10 is amended by adding at the end the following:

11 “(C) DIESEL-WATER FUEL EMULSION.—In
12 the case of diesel-water fuel emulsion at least
13 14 percent of which is water and with respect
14 to which the emulsion additive is registered by
15 a United States manufacturer with the Envi-
16 ronmental Protection Agency pursuant to sec-
17 tion 211 of the Clean Air Act (as in effect on
18 March 31, 2003), subparagraph (A)(iii) shall be
19 applied by substituting ‘19.7 cents’ for ‘24.3
20 cents’.”.

21 (b) SPECIAL RULES FOR DIESEL-WATER FUEL
22 EMULSIONS.—

23 (1) REFUNDS FOR TAX-PAID PURCHASES.—Sec-
24 tion 6427 is amended by redesignating subsections



1 (m) through (p) as subsections (n) through (q), re-
2 spectively, and by inserting after subsection (l) the
3 following new subsection:

4 “(m) DIESEL FUEL USED TO PRODUCE EMUL-
5 SION.—

6 “(1) IN GENERAL.—Except as provided in sub-
7 section (k), if any diesel fuel on which tax was im-
8 posed by section 4081 at the regular tax rate is used
9 by any person in producing an emulsion described in
10 section 4081(a)(2)(C) which is sold or used in such
11 person’s trade or business, the Secretary shall pay
12 (without interest) to such person an amount equal to
13 the excess of the regular tax rate over the incentive
14 tax rate with respect to such fuel.

15 “(2) DEFINITIONS.—For purposes of paragraph
16 (1)—

17 “(A) REGULAR TAX RATE.—The term ‘reg-
18 ular tax rate’ means the aggregate rate of tax
19 imposed by section 4081 determined without re-
20 gard to section 4081(a)(2)(C).

21 “(B) INCENTIVE TAX RATE.—The term
22 ‘incentive tax rate’ means the aggregate rate of
23 tax imposed by section 4081 determined with
24 regard to section 4081(a)(2)(C).”.

25 (2) LATER SEPARATION OF FUEL.—



1 (A) IN GENERAL.—Section 4081 (relating
2 to imposition of tax) is amended by redesignig-
3 nating subsections (d) and (e) as subsections
4 (e) and (f), respectively, and by inserting after
5 subsection (c) the following new subsection:

6 “(d) LATER SEPARATION OF FUEL FROM DIESEL-
7 WATER FUEL EMULSION.—If any person separates the
8 taxable fuel from a diesel-water fuel emulsion on which
9 tax was imposed under subsection (a) at a rate determined
10 under subsection (a)(2)(C) (or with respect to which a
11 credit or payment was allowed or made by reason of sec-
12 tion 6427), such person shall be treated as the refiner of
13 such taxable fuel. The amount of tax imposed on any re-
14 moval of such fuel by such person shall be reduced by the
15 amount of tax imposed (and not credited or refunded) on
16 any prior removal or entry of such fuel.”.

17 (B) CONFORMING AMENDMENT.—Sub-
18 section (d) of section 6416 is amended by strik-
19 ing “section 4081(e)” and inserting “section
20 4081(f)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on January 1, 2006.

23 **SEC. 1313. SMALL ETHANOL PRODUCER CREDIT.**

[Note: Enacted by section 313 of the American Jobs
Creation Act of 2004]



1 **SEC. 1314. INCENTIVES FOR BIODIESEL.**

2 (a) REENACTMENT OF SECTION 302 OF AMERICAN
3 JOBS CREATION ACT OF 2004.—Section 40A is amended
4 to read as follows:

5 **“SEC. 40A. BIODIESEL USED AS FUEL.**

6 “(a) GENERAL RULE.—For purposes of section 38,
7 the biodiesel fuels credit determined under this section for
8 the taxable year is an amount equal to the sum of—

9 “(1) the biodiesel mixture credit, plus

10 “(2) the biodiesel credit.

11 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT
12 AND BIODIESEL CREDIT.—For purposes of this section—

13 “(1) BIODIESEL MIXTURE CREDIT.—

14 “(A) IN GENERAL.—The biodiesel mixture
15 credit of any taxpayer for any taxable year is
16 50 cents for each gallon of biodiesel used by the
17 taxpayer in the production of a qualified bio-
18 diesel mixture.

19 “(B) QUALIFIED BIODIESEL MIXTURE.—
20 The term ‘qualified biodiesel mixture’ means a
21 mixture of biodiesel and diesel fuel (as defined
22 in section 4083(a)(3)), determined without re-
23 gard to any use of kerosene, which—

24 “(i) is sold by the taxpayer producing
25 such mixture to any person for use as a
26 fuel, or



1 “(ii) is used as a fuel by the taxpayer
2 producing such mixture.

3 “(C) SALE OR USE MUST BE IN TRADE OR
4 BUSINESS, ETC.—Biodiesel used in the produc-
5 tion of a qualified biodiesel mixture shall be
6 taken into account—

7 “(i) only if the sale or use described
8 in subparagraph (B) is in a trade or busi-
9 ness of the taxpayer, and

10 “(ii) for the taxable year in which
11 such sale or use occurs.

12 “(D) CASUAL OFF-FARM PRODUCTION NOT
13 ELIGIBLE.—No credit shall be allowed under
14 this section with respect to any casual off-farm
15 production of a qualified biodiesel mixture.

16 “(2) BIODIESEL CREDIT.—

17 “(A) IN GENERAL.—The biodiesel credit of
18 any taxpayer for any taxable year is 50 cents
19 for each gallon of biodiesel which is not in a
20 mixture with diesel fuel and which during the
21 taxable year—

22 “(i) is used by the taxpayer as a fuel
23 in a trade or business, or



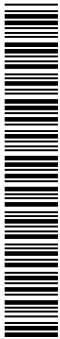
1 “(ii) is sold by the taxpayer at retail
2 to a person and placed in the fuel tank of
3 such person’s vehicle.

4 “(B) USER CREDIT NOT TO APPLY TO BIO-
5 DIESEL SOLD AT RETAIL.—No credit shall be
6 allowed under subparagraph (A)(i) with respect
7 to any biodiesel which was sold in a retail sale
8 described in subparagraph (A)(ii).

9 “(3) CREDIT FOR AGRI-BIODIESEL.—In the
10 case of any biodiesel which is agri-biodiesel, para-
11 graphs (1)(A) and (2)(A) shall be applied by sub-
12 stituting ‘\$1.00’ for ‘50 cents’.

13 “(4) CERTIFICATION FOR BIODIESEL.—No
14 credit shall be allowed under this section unless the
15 taxpayer obtains a certification (in such form and
16 manner as prescribed by the Secretary) from the
17 producer or importer of the biodiesel which identifies
18 the product produced and the percentage of biodiesel
19 and agri-biodiesel in the product.

20 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
21 TAX.—The amount of the credit determined under this
22 section with respect to any biodiesel shall be properly re-
23 duced to take into account any benefit provided with re-
24 spect to such biodiesel solely by reason of the application
25 of section 6426 or 6427(e).



1 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) BIODIESEL.—The term ‘biodiesel’ means
4 the monoalkyl esters of long chain fatty acids de-
5 rived from plant or animal matter which meet—

6 “(A) the registration requirements for
7 fuels and fuel additives established by the Envi-
8 ronmental Protection Agency under section 211
9 of the Clean Air Act (42 U.S.C. 7545), and

10 “(B) the requirements of the American So-
11 ciety of Testing and Materials D6751.

12 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
13 diesel’ means biodiesel derived solely from virgin oils,
14 including esters derived from virgin vegetable oils
15 from corn, soybeans, sunflower seeds, cottonseeds,
16 canola, crambe, rapeseeds, safflowers, flaxseeds, rice
17 bran, and mustard seeds, and from animal fats.

18 “(3) MIXTURE OR BIODIESEL NOT USED AS A
19 FUEL, ETC.—

20 “(A) MIXTURES.—If—

21 “(i) any credit was determined under
22 this section with respect to biodiesel used
23 in the production of any qualified biodiesel
24 mixture, and

25 “(ii) any person—



1 “(I) separates the biodiesel from
2 the mixture, or

3 “(II) without separation, uses the
4 mixture other than as a fuel,

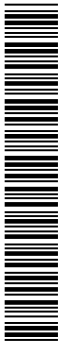
5 then there is hereby imposed on such person a
6 tax equal to the product of the rate applicable
7 under subsection (b)(1)(A) and the number of
8 gallons of such biodiesel in such mixture.

9 “(B) BIODIESEL.—If—

10 “(i) any credit was determined under
11 this section with respect to the retail sale
12 of any biodiesel, and

13 “(ii) any person mixes such biodiesel
14 or uses such biodiesel other than as a fuel,
15 then there is hereby imposed on such person a
16 tax equal to the product of the rate applicable
17 under subsection (b)(2)(A) and the number of
18 gallons of such biodiesel.

19 “(C) APPLICABLE LAWS.—All provisions of
20 law, including penalties, shall, insofar as appli-
21 cable and not inconsistent with this section,
22 apply in respect of any tax imposed under sub-
23 paragraph (A) or (B) as if such tax were im-
24 posed by section 4081 and not by this chapter.



1 “(4) PASS-THRU IN THE CASE OF ESTATES AND
2 TRUSTS.—Under regulations prescribed by the Sec-
3 retary, rules similar to the rules of subsection (d) of
4 section 52 shall apply.

5 “(e) TERMINATION.—This section shall not apply to
6 any sale or use after December 31, 2006.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect as if included in the amend-
9 ments made by section 302 of the American Jobs Creation
10 Act of 2004.

11 **SEC. 1315. ALCOHOL FUEL AND BIODIESEL MIXTURES EX-**
12 **CISE TAX CREDIT.**

13 (a) REENACTMENT OF SECTION 301 OF AMERICAN
14 JOBS CREATION ACT OF 2004.—Section 6426 is amended
15 to read as follows:

16 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
17 **MIXTURES.**

18 “(a) ALLOWANCE OF CREDITS.—There shall be al-
19 lowed as a credit against the tax imposed by section 4081
20 an amount equal to the sum of—

21 “(1) the alcohol fuel mixture credit, plus

22 “(2) the biodiesel mixture credit.

23 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

24 “(1) IN GENERAL.—For purposes of this sec-
25 tion, the alcohol fuel mixture credit is the product



1 of the applicable amount and the number of gallons
2 of alcohol used by the taxpayer in producing any al-
3 cohool fuel mixture for sale or use in a trade or busi-
4 ness of the taxpayer.

5 “(2) APPLICABLE AMOUNT.—For purposes of
6 this subsection—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the applicable amount is 51
9 cents.

10 “(B) MIXTURES NOT CONTAINING ETH-
11 ANOL.—In the case of an alcohol fuel mixture
12 in which none of the alcohol consists of ethanol,
13 the applicable amount is 60 cents.

14 “(3) ALCOHOL FUEL MIXTURE.—For purposes
15 of this subsection, the term ‘alcohol fuel mixture’
16 means a mixture of alcohol and a taxable fuel
17 which—

18 “(A) is sold by the taxpayer producing
19 such mixture to any person for use as a fuel,
20 or

21 “(B) is used as a fuel by the taxpayer pro-
22 ducing such mixture.

23 For purposes of subparagraph (A), a mixture pro-
24 duced by any person at a refinery prior to a taxable
25 event which includes ethyl tertiary butyl ether or



1 other ethers produced from alcohol shall be treated
2 as sold at the time of its removal from the refinery
3 (and only at such time) to another person for use as
4 a fuel.

5 “(4) OTHER DEFINITIONS.—For purposes of
6 this subsection—

7 “(A) ALCOHOL.—The term ‘alcohol’ in-
8 cludes methanol and ethanol but does not
9 include—

10 “(i) alcohol produced from petroleum,
11 natural gas, or coal (including peat), or

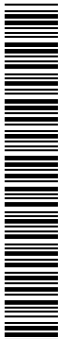
12 “(ii) alcohol with a proof of less than
13 190 (determined without regard to any
14 added denaturants).

15 Such term also includes an alcohol gallon equiv-
16 alent of ethyl tertiary butyl ether or other
17 ethers produced from such alcohol.

18 “(B) TAXABLE FUEL.—The term ‘taxable
19 fuel’ has the meaning given such term by sec-
20 tion 4083(a)(1).

21 “(5) TERMINATION.—This subsection shall not
22 apply to any sale, use, or removal for any period
23 after December 31, 2010.

24 “(c) BIODIESEL MIXTURE CREDIT.—



1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the biodiesel mixture credit is the product of
3 the applicable amount and the number of gallons of
4 biodiesel used by the taxpayer in producing any bio-
5 diesel mixture for sale or use in a trade or business
6 of the taxpayer.

7 “(2) APPLICABLE AMOUNT.—For purposes of
8 this subsection—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the applicable amount is 50
11 cents.

12 “(B) AMOUNT FOR AGRI-BIODIESEL.—In
13 the case of any biodiesel which is agri-biodiesel,
14 the applicable amount is \$1.00.

15 “(3) BIODIESEL MIXTURE.—For purposes of
16 this section, the term ‘biodiesel mixture’ means a
17 mixture of biodiesel and diesel fuel (as defined in
18 section 4083(a)(3)), determined without regard to
19 any use of kerosene, which—

20 “(A) is sold by the taxpayer producing
21 such mixture to any person for use as a fuel,
22 or

23 “(B) is used as a fuel by the taxpayer pro-
24 ducing such mixture.



1 “(4) CERTIFICATION FOR BIODIESEL.—No
2 credit shall be allowed under this subsection unless
3 the taxpayer obtains a certification (in such form
4 and manner as prescribed by the Secretary) from
5 the producer of the biodiesel which identifies the
6 product produced and the percentage of biodiesel
7 and agri-biodiesel in the product.

8 “(5) OTHER DEFINITIONS.—Any term used in
9 this subsection which is also used in section 40A
10 shall have the meaning given such term by section
11 40A.

12 “(6) TERMINATION.—This subsection shall not
13 apply to any sale, use, or removal for any period
14 after December 31, 2006.

15 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

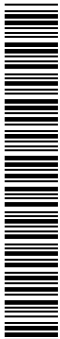
16 “(1) IMPOSITION OF TAX.—If—

17 “(A) any credit was determined under this
18 section with respect to alcohol or biodiesel used
19 in the production of any alcohol fuel mixture or
20 biodiesel mixture, respectively, and

21 “(B) any person—

22 “(i) separates the alcohol or biodiesel
23 from the mixture, or

24 “(ii) without separation, uses the mix-
25 ture other than as a fuel,



1 then there is hereby imposed on such person a
2 tax equal to the product of the applicable
3 amount and the number of gallons of such alco-
4 hol or biodiesel.

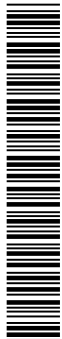
5 “(2) APPLICABLE LAWS.—All provisions of law,
6 including penalties, shall, insofar as applicable and
7 not inconsistent with this section, apply in respect of
8 any tax imposed under paragraph (1) as if such tax
9 were imposed by section 4081 and not by this sec-
10 tion.

11 “(e) COORDINATION WITH EXEMPTION FROM EX-
12 CISE TAX.—Rules similar to the rules under section 40(c)
13 shall apply for purposes of this section.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall take effect as if included in section 301
16 of the American Jobs Creation Act of 2004.

17 **SEC. 1316. NONAPPLICATION OF EXPORT EXEMPTION TO**
18 **DELIVERY OF FUEL TO MOTOR VEHICLES RE-**
19 **MOVED FROM UNITED STATES.**

20 (a) IN GENERAL.—Section 4221(d)(2) (defining ex-
21 port) is amended by adding at the end the following new
22 sentence: “Such term does not include the delivery of a
23 taxable fuel (as defined in section 4083(a)(1)) into a fuel
24 tank of a motor vehicle which is shipped or driven out
25 of the United States.”.



1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 4041(g) (relating to other exemp-
3 tions) is amended by adding at the end the following
4 new sentence: “Paragraph (3) shall not apply to the
5 sale for delivery of a liquid into a fuel tank of a
6 motor vehicle which is shipped or driven out of the
7 United States.”.

8 (2) Clause (iv) of section 4081(a)(1)(A) (relat-
9 ing to tax on removal, entry, or sale) is amended by
10 inserting “or at a duty-free sales enterprise (as de-
11 fined in section 555(b)(8) of the Tariff Act of
12 1930)” after “section 4101”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to sales or deliveries made after
15 the date of the enactment of this Act.

16 **SEC. 1317. PHASEOUTS FOR QUALIFIED ELECTRIC VEHICLE**
17 **CREDIT AND DEDUCTION FOR CLEAN FUEL-**
18 **VEHICLES.**

19 (a) REENACTMENT OF SECTION 318 OF WORKING
20 FAMILIES TAX RELIEF ACT OF 2004.—Paragraph (2) of
21 section 30(b) is amended to read as follows:

22 “(2) PHASEOUT.—In the case of any qualified
23 electric vehicle placed in service after December 31,
24 2005, the credit otherwise allowable under sub-



1 section (a) (determined after the application of para-
2 graph (1)) shall be reduced by 75 percent.”.

3 (b) REENACTMENT OF SECTION 319 OF WORKING
4 FAMILIES TAX RELIEF ACT OF 2004.—Subparagraph (B)
5 of section 179A(b)(1) is amended to read as follows:

6 “(B) PHASEOUT.—In the case of any
7 qualified clean-fuel vehicle property placed in
8 service after December 31, 2005, the limit oth-
9 erwise allowable under subparagraph (A) shall
10 be reduced by 75 percent.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect as if included in the provisions
13 of the Working Families Tax Relief Act of 2004 to which
14 such amendments relate.

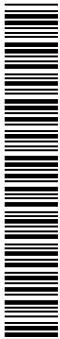
15 **SEC. 1318. ALTERNATIVE MOTOR VEHICLE CREDIT.**

16 (a) IN GENERAL.—Subpart B of part IV of sub-
17 chapter A of chapter 1 (relating to foreign tax credit, etc.)
18 is amended by adding at the end the following:

19 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

20 “(a) ALLOWANCE OF CREDIT.—There shall be al-
21 lowed as a credit against the tax imposed by this chapter
22 for the taxable year an amount equal to the sum of—

23 “(1) the new qualified fuel cell motor vehicle
24 credit determined under subsection (b),



1 “(2) the new advanced lean burn technology
2 motor vehicle credit determined under subsection (c),

3 “(3) the new qualified hybrid motor vehicle
4 credit determined under subsection (d), and

5 “(4) the new qualified alternative fuel motor ve-
6 hicle credit determined under subsection (e).

7 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
8 CREDIT.—

9 “(1) IN GENERAL.—For purposes of subsection
10 (a), the new qualified fuel cell motor vehicle credit
11 determined under this subsection with respect to a
12 new qualified fuel cell motor vehicle placed in service
13 by the taxpayer during the taxable year shall be de-
14 termined in accordance with the following table:

“In the case of a vehicle which has a gross vehicle weight rat- ing of—	The new qualified fuel cell motor vehicle credit is—
--	---

Not more than 8,500 lbs	\$4,000
More than 8,500 lbs but not more than 14,000 lbs	\$10,000
More than 14,000 lbs but not more than 26,000 lbs	\$20,000
More than 26,000 lbs	\$40,000.

15 “(2) INCREASE FOR FUEL EFFICIENCY.—

16 “(A) IN GENERAL.—The amount deter-
17 mined under paragraph (1) with respect to a
18 new qualified fuel cell motor vehicle which is a
19 passenger automobile or light truck shall be in-
20 creased by the additional credit amount.

21 “(B) ADDITIONAL CREDIT AMOUNT.—For
22 purposes of subparagraph (A), the additional



1 credit amount shall be determined in accord-
2 ance with the following table:

“In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	The additional credit amount is—
---	---

At least 150 percent but less than 175 percent	\$1,000
At least 175 percent but less than 200 percent	\$1,500
At least 200 percent but less than 225 percent	\$2,000
At least 225 percent but less than 250 percent	\$2,500
At least 250 percent but less than 275 percent	\$3,000
At least 275 percent but less than 300 percent	\$3,500
At least 300 percent	\$4,000.

3 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
4 CLE.—For purposes of this subsection, the term
5 ‘new qualified fuel cell motor vehicle’ means a motor
6 vehicle—

7 “(A) which is propelled by power derived
8 from one or more cells which convert chemical
9 energy directly into electricity by combining ox-
10 ygen with hydrogen fuel which is stored on
11 board the vehicle in any form and may or may
12 not require reformation prior to use,

13 “(B) which, in the case of a passenger
14 automobile or light truck, has received—

15 “(i) a certificate of conformity under
16 the Clean Air Act and meets or exceeds the
17 equivalent qualifying California low emis-
18 sion vehicle standard under section
19 243(e)(2) of the Clean Air Act for that
20 make and model year, and



1 “(ii) a certificate that such vehicle
2 meets or exceeds the Bin 5 Tier II emis-
3 sion standard established in regulations
4 prescribed by the Administrator of the En-
5 vironmental Protection Agency under sec-
6 tion 202(i) of the Clean Air Act for that
7 make and model year vehicle,

8 “(C) the original use of which commences
9 with the taxpayer,

10 “(D) which is acquired for use or lease by
11 the taxpayer and not for resale, and

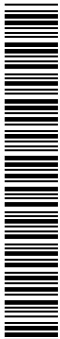
12 “(E) which is made by a manufacturer.

13 “(c) NEW ADVANCED LEAN BURN TECHNOLOGY
14 MOTOR VEHICLE CREDIT.—

15 “(1) IN GENERAL.—For purposes of subsection
16 (a), the new advanced lean burn technology motor
17 vehicle credit determined under this subsection with
18 respect to a new advanced lean burn technology
19 motor vehicle placed in service by the taxpayer dur-
20 ing the taxable year is the credit amount determined
21 under paragraph (2).

22 “(2) CREDIT AMOUNT.—

23 “(A) FUEL ECONOMY.—The credit amount
24 determined under this paragraph shall be deter-
25 mined in accordance with the following table:



“In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—

The credit amount is—

At least 125 percent but less than 150 percent	\$400
At least 150 percent but less than 175 percent	\$800
At least 175 percent but less than 200 percent	\$1,200
At least 200 percent but less than 225 percent	\$1,600
At least 225 percent but less than 250 percent	\$2,000
At least 250 percent	\$2,400.

1 “(B) CONSERVATION CREDIT.—The
2 amount determined under subparagraph (A)
3 with respect to a new advanced lean burn tech-
4 nology motor vehicle shall be increased by the
5 conservation credit amount determined in ac-
6 cordance with the following table:

“In the case of a vehicle which achieves a lifetime fuel savings (expressed in gallons of gasoline) of—

The conservation credit amount is—

At least 1,200 but less than 1,800	\$250
At least 1,800 but less than 2,400	\$500
At least 2,400 but less than 3,000	\$750
At least 3,000	\$1,000.

7 “(3) NEW ADVANCED LEAN BURN TECHNOLOGY
8 MOTOR VEHICLE.—For purposes of this subsection,
9 the term ‘new advanced lean burn technology motor
10 vehicle’ means a passenger automobile or a light
11 truck—

12 “(A) with an internal combustion engine
13 which—

14 “(i) is designed to operate primarily
15 using more air than is necessary for com-
16 plete combustion of the fuel,



1 “(ii) incorporates direct injection,

2 “(iii) achieves at least 125 percent of
3 the 2002 model year city fuel economy,

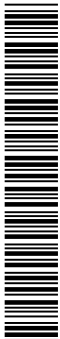
4 “(iv) for 2004 and later model vehi-
5 cles, has received a certificate that such ve-
6 hicle meets or exceeds—

7 “(I) in the case of a vehicle hav-
8 ing a gross vehicle weight rating of
9 6,000 pounds or less, the Bin 5 Tier
10 II emission standard established in
11 regulations prescribed by the Adminis-
12 trator of the Environmental Protec-
13 tion Agency under section 202(i) of
14 the Clean Air Act for that make and
15 model year vehicle, and

16 “(II) in the case of a vehicle hav-
17 ing a gross vehicle weight rating of
18 more than 6,000 pounds but not more
19 than 8,500 pounds, the Bin 8 Tier II
20 emission standard which is so estab-
21 lished.

22 “(B) the original use of which commences
23 with the taxpayer,

24 “(C) which is acquired for use or lease by
25 the taxpayer and not for resale, and



1 “(D) which is made by a manufacturer.

2 “(4) LIFETIME FUEL SAVINGS.—For purposes
3 of this subsection, the term ‘lifetime fuel savings’
4 means, in the case of any new advanced lean burn
5 technology motor vehicle, an amount equal to the ex-
6 cess (if any) of—

7 “(A) 120,000 divided by the 2002 model
8 year city fuel economy for the vehicle inertia
9 weight class, over

10 “(B) 120,000 divided by the city fuel econ-
11 omy for such vehicle.

12 “(d) NEW QUALIFIED HYBRID MOTOR VEHICLE
13 CREDIT.—

14 “(1) IN GENERAL.—For purposes of subsection
15 (a), the new qualified hybrid motor vehicle credit de-
16 termined under this subsection with respect to a new
17 qualified hybrid motor vehicle placed in service by
18 the taxpayer during the taxable year is the credit
19 amount determined under paragraph (2).

20 “(2) CREDIT AMOUNT.—

21 “(A) CREDIT AMOUNT FOR PASSENGER
22 AUTOMOBILES AND LIGHT TRUCKS.—In the
23 case of a new qualified hybrid motor vehicle
24 which is a passenger automobile or light truck
25 and which has a gross vehicle weight rating of



1 not more than 8,500 pounds, the amount deter-
2 mined under this paragraph is the sum of the
3 amounts determined under clauses (i) and (ii).

4 “(i) FUEL ECONOMY.—The amount
5 determined under this clause is the amount
6 which would be determined under sub-
7 section (c)(2)(A) if such vehicle were a ve-
8 hicle referred to in such subsection.

9 “(ii) CONSERVATION CREDIT.—The
10 amount determined under this clause is the
11 amount which would be determined under
12 subsection (c)(2)(B) if such vehicle were a
13 vehicle referred to in such subsection.

14 “(B) CREDIT AMOUNT FOR OTHER MOTOR
15 VEHICLES.—

16 “(i) IN GENERAL.—In the case of any
17 new qualified hybrid motor vehicle to which
18 subparagraph (A) does not apply, the
19 amount determined under this paragraph
20 is the amount equal to the applicable per-
21 centage of the qualified incremental hybrid
22 cost of the vehicle as certified under clause
23 (v).



1 “(ii) APPLICABLE PERCENTAGE.—For
2 purposes of clause (i), the applicable per-
3 centage is—

4 “(I) 20 percent if the vehicle
5 achieves an increase in city fuel econ-
6 omy relative to a comparable vehicle
7 of at least 30 percent but less than 40
8 percent,

9 “(II) 30 percent if the vehicle
10 achieves such an increase of at least
11 40 percent but less than 50 percent,
12 and

13 “(III) 40 percent if the vehicle
14 achieves such an increase of at least
15 50 percent.

16 “(iii) QUALIFIED INCREMENTAL HY-
17 BRID COST.—For purposes of this subpara-
18 graph, the qualified incremental hybrid
19 cost of any vehicle is equal to the amount
20 of the excess of the manufacturer’s sug-
21 gested retail price for such vehicle over
22 such price for a comparable vehicle, to the
23 extent such amount does not exceed—



1 “(I) \$7,500, if such vehicle has a
2 gross vehicle weight rating of not
3 more than 14,000 pounds,

4 “(II) \$15,000, if such vehicle has
5 a gross vehicle weight rating of more
6 than 14,000 pounds but not more
7 than 26,000 pounds, and

8 “(III) \$30,000, if such vehicle
9 has a gross vehicle weight rating of
10 more than 26,000 pounds.

11 “(iv) COMPARABLE VEHICLE.—For
12 purposes of this subparagraph, the term
13 ‘comparable vehicle’ means, with respect to
14 any new qualified hybrid motor vehicle,
15 any vehicle which is powered solely by a
16 gasoline or diesel internal combustion en-
17 gine and which is comparable in weight,
18 size, and use to such vehicle.

19 “(v) CERTIFICATION.—A certification
20 described in clause (i) shall be made by the
21 manufacturer and shall be determined in
22 accordance with guidance prescribed by the
23 Secretary. Such guidance shall specify pro-
24 cedures and methods for calculating fuel



1 economy savings and incremental hybrid
2 costs.

3 “(3) NEW QUALIFIED HYBRID MOTOR VEHI-
4 CLE.—For purposes of this subsection—

5 “(A) IN GENERAL.—The term ‘new quali-
6 fied hybrid motor vehicle’ means a motor
7 vehicle—

8 “(i) which draws propulsion energy
9 from onboard sources of stored energy
10 which are both—

11 “(I) an internal combustion or
12 heat engine using consumable fuel,
13 and

14 “(II) a rechargeable energy stor-
15 age system,

16 “(ii) which, in the case of a vehicle to
17 which paragraph (2)(A) applies, has re-
18 ceived a certificate of conformity under the
19 Clean Air Act and meets or exceeds the
20 equivalent qualifying California low emis-
21 sion vehicle standard under section
22 243(e)(2) of the Clean Air Act for that
23 make and model year, and

24 “(I) in the case of a vehicle hav-
25 ing a gross vehicle weight rating of



1 6,000 pounds or less, the Bin 5 Tier
2 II emission standard established in
3 regulations prescribed by the Adminis-
4 trator of the Environmental Protec-
5 tion Agency under section 202(i) of
6 the Clean Air Act for that make and
7 model year vehicle, and

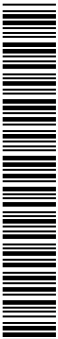
8 “(II) in the case of a vehicle hav-
9 ing a gross vehicle weight rating of
10 more than 6,000 pounds but not more
11 than 8,500 pounds, the Bin 8 Tier II
12 emission standard which is so estab-
13 lished,

14 “(iii) which has a maximum available
15 power of at least—

16 “(I) 4 percent in the case of a ve-
17 hicle to which paragraph (2)(A) ap-
18 plies,

19 “(II) 10 percent in the case of a
20 vehicle which has a gross vehicle
21 weight rating or more than 8,500
22 pounds and not than 14,000 pounds,
23 and

24 “(III) 15 percent in the case of a
25 vehicle in excess of 14,000 pounds,



1 “(iv) which, in the case of a vehicle to
2 which paragraph (2)(B) applies, has an in-
3 ternal combustion or heat engine which
4 has received a certificate of conformity
5 under the Clean Air Act as meeting the
6 emission standards set in the regulations
7 prescribed by the Administrator of the En-
8 vironmental Protection Agency for 2004
9 through 2007 model year diesel heavy duty
10 engines or ottocycle heavy duty engines, as
11 applicable,

12 “(v) the original use of which com-
13 mences with the taxpayer,

14 “(vi) which is acquired for use or
15 lease by the taxpayer and not for resale,
16 and

17 “(vii) which is made by a manufac-
18 turer.

19 Such term shall not include any vehicle which
20 is not a passenger automobile or light truck if
21 such vehicle has a gross vehicle weight rating of
22 less than 8,500 pounds.

23 “(B) CONSUMABLE FUEL.—For purposes
24 of subparagraph (A)(i)(I), the term ‘consumable
25 fuel’ means any solid, liquid, or gaseous matter



1 which releases energy when consumed by an
2 auxiliary power unit.

3 “(C) MAXIMUM AVAILABLE POWER.—

4 “(i) CERTAIN PASSENGER AUTO-
5 MOBILES AND LIGHT TRUCKS.—In the case
6 of a vehicle to which paragraph (2)(A) ap-
7 plies, the term ‘maximum available power’
8 means the maximum power available from
9 the rechargeable energy storage system,
10 during a standard 10 second pulse power
11 or equivalent test, divided by such max-
12 imum power and the SAE net power of the
13 heat engine.

14 “(ii) OTHER MOTOR VEHICLES.—In
15 the case of a vehicle to which paragraph
16 (2)(B) applies, the term ‘maximum avail-
17 able power’ means the maximum power
18 available from the rechargeable energy
19 storage system, during a standard 10 sec-
20 ond pulse power or equivalent test, divided
21 by the vehicle’s total traction power. For
22 purposes of the preceding sentence, the
23 term ‘total traction power’ means the sum
24 of the peak power from the rechargeable
25 energy storage system and the heat engine



1 peak power of the vehicle, except that if
2 such storage system is the sole means by
3 which the vehicle can be driven, the total
4 traction power is the peak power of such
5 storage system.

6 “(e) NEW QUALIFIED ALTERNATIVE FUEL MOTOR
7 VEHICLE CREDIT.—

8 “(1) ALLOWANCE OF CREDIT.—Except as pro-
9 vided in paragraph (5), the new qualified alternative
10 fuel motor vehicle credit determined under this sub-
11 section is an amount equal to the applicable percent-
12 age of the incremental cost of any new qualified al-
13 ternative fuel motor vehicle placed in service by the
14 taxpayer during the taxable year.

15 “(2) APPLICABLE PERCENTAGE.—For purposes
16 of paragraph (1), the applicable percentage with re-
17 spect to any new qualified alternative fuel motor ve-
18 hicle is—

19 “(A) 40 percent, plus

20 “(B) 30 percent, if such vehicle—

21 “(i) has received a certificate of con-
22 formity under the Clean Air Act and meets
23 or exceeds the most stringent standard
24 available for certification under the Clean
25 Air Act for that make and model year vehi-



1 cle (other than a zero emission standard),
2 or

3 “(ii) has received an order certifying
4 the vehicle as meeting the same require-
5 ments as vehicles which may be sold or
6 leased in California and meets or exceeds
7 the most stringent standard available for
8 certification under the State laws of Cali-
9 fornia (enacted in accordance with a waiv-
10 er granted under section 209(b) of the
11 Clean Air Act) for that make and model
12 year vehicle (other than a zero emission
13 standard).

14 For purposes of the preceding sentence, in the case
15 of any new qualified alternative fuel motor vehicle
16 which has a gross vehicle weight rating of more than
17 14,000 pounds, the most stringent standard avail-
18 able shall be such standard available for certification
19 on the date of the enactment of the Energy Tax Pol-
20 icy Act of 2005.

21 “(3) INCREMENTAL COST.—For purposes of
22 this subsection, the incremental cost of any new
23 qualified alternative fuel motor vehicle is equal to
24 the amount of the excess of the manufacturer’s sug-
25 gested retail price for such vehicle over such price



1 for a gasoline or diesel fuel motor vehicle of the
2 same model, to the extent such amount does not
3 exceed—

4 “(A) \$5,000, if such vehicle has a gross ve-
5 hicle weight rating of not more than 8,500
6 pounds,

7 “(B) \$10,000, if such vehicle has a gross
8 vehicle weight rating of more than 8,500
9 pounds but not more than 14,000 pounds,

10 “(C) \$25,000, if such vehicle has a gross
11 vehicle weight rating of more than 14,000
12 pounds but not more than 26,000 pounds, and

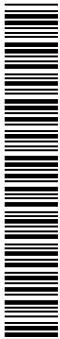
13 “(D) \$40,000, if such vehicle has a gross
14 vehicle weight rating of more than 26,000
15 pounds.

16 “(4) NEW QUALIFIED ALTERNATIVE FUEL
17 MOTOR VEHICLE.—For purposes of this
18 subsection—

19 “(A) IN GENERAL.—The term ‘new quali-
20 fied alternative fuel motor vehicle’ means any
21 motor vehicle—

22 “(i) which is only capable of operating
23 on an alternative fuel,

24 “(ii) the original use of which com-
25 mences with the taxpayer,



1 “(iii) which is acquired by the tax-
2 payer for use or lease, but not for resale,
3 and

4 “(iv) which is made by a manufac-
5 turer.

6 “(B) ALTERNATIVE FUEL.—The term ‘al-
7 ternative fuel’ means compressed natural gas,
8 liquefied natural gas, liquefied petroleum gas,
9 hydrogen, and any liquid at least 85 percent of
10 the volume of which consists of methanol.

11 “(5) CREDIT FOR MIXED-FUEL VEHICLES.—

12 “(A) IN GENERAL.—In the case of a
13 mixed-fuel vehicle placed in service by the tax-
14 payer during the taxable year, the credit deter-
15 mined under this subsection is an amount equal
16 to—

17 “(i) in the case of a 75/25 mixed-fuel
18 vehicle, 70 percent of the credit which
19 would have been allowed under this sub-
20 section if such vehicle was a qualified alter-
21 native fuel motor vehicle, and

22 “(ii) in the case of a 90/10 mixed-fuel
23 vehicle, 90 percent of the credit which
24 would have been allowed under this sub-



1 section if such vehicle was a qualified alter-
2 native fuel motor vehicle.

3 “(B) MIXED-FUEL VEHICLE.—For pur-
4 poses of this subsection, the term ‘mixed-fuel
5 vehicle’ means any motor vehicle described in
6 subparagraph (C) or (D) of paragraph (3),
7 which—

8 “(i) is certified by the manufacturer
9 as being able to perform efficiently in nor-
10 mal operation on a combination of an al-
11 ternative fuel and a petroleum-based fuel,

12 “(ii) either—

13 “(I) has received a certificate of
14 conformity under the Clean Air Act,
15 or

16 “(II) has received an order certi-
17 fying the vehicle as meeting the same
18 requirements as vehicles which may be
19 sold or leased in California and meets
20 or exceeds the low emission vehicle
21 standard under section 88.105–94 of
22 title 40, Code of Federal Regulations,
23 for that make and model year vehicle,

24 “(iii) the original use of which com-
25 mences with the taxpayer,



1 “(iv) which is acquired by the tax-
2 payer for use or lease, but not for resale,
3 and

4 “(v) which is made by a manufac-
5 turer.

6 “(C) 75/25 MIXED-FUEL VEHICLE.—For
7 purposes of this subsection, the term ‘75/25
8 mixed-fuel vehicle’ means a mixed-fuel vehicle
9 which operates using at least 75 percent alter-
10 native fuel and not more than 25 percent petro-
11 leum-based fuel.

12 “(D) 90/10 MIXED-FUEL VEHICLE.—For
13 purposes of this subsection, the term ‘90/10
14 mixed-fuel vehicle’ means a mixed-fuel vehicle
15 which operates using at least 90 percent alter-
16 native fuel and not more than 10 percent petro-
17 leum-based fuel.

18 “(f) LIMITATION ON NUMBER OF NEW QUALIFIED
19 HYBRID AND ADVANCED LEAN-BURN TECHNOLOGY VE-
20 HICLES ELIGIBLE FOR CREDIT.—

21 “(1) IN GENERAL.—In the case of a qualified
22 vehicle sold during the phaseout period, only the ap-
23 plicable percentage of the credit otherwise allowable
24 under subsection (c) or (d) shall be allowed.



1 “(2) PHASEOUT PERIOD.—For purposes of this
2 subsection, the phaseout period is the period begin-
3 ning with the second calendar quarter following the
4 calendar quarter which includes the first date on
5 which the number of qualified vehicles manufactured
6 by the manufacturer of the vehicle referred to in
7 paragraph (1) sold for use in the United States after
8 the date of the enactment of this section is at least
9 80,000.

10 “(3) APPLICABLE PERCENTAGE.—For purposes
11 of paragraph (1), the applicable percentage is—

12 “(A) 50 percent for the first 2 calendar
13 quarters of the phaseout period,

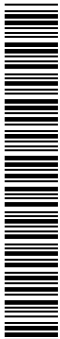
14 “(B) 25 percent for the 3d and 4th cal-
15 endar quarters of the phaseout period, and

16 “(C) 0 percent for each calendar quarter
17 thereafter.

18 “(4) CONTROLLED GROUPS.—

19 “(A) IN GENERAL.—For purposes of this
20 subsection, all persons treated as a single em-
21 ployer under subsection (a) or (b) of section 52
22 or subsection (m) or (o) of section 414 shall be
23 treated as a single manufacturer.

24 “(B) INCLUSION OF FOREIGN CORPORA-
25 TIONS.—For purposes of subparagraph (A), in



1 applying subsections (a) and (b) of section 52
2 to this section, section 1563 shall be applied
3 without regard to subsection (b)(2)(C) thereof.

4 “(5) QUALIFIED VEHICLE.—For purposes of
5 this subsection, the term ‘qualified vehicle’ means
6 any new qualified hybrid motor vehicle and any new
7 advanced lean burn technology motor vehicle.

8 “(g) LIMITATION BASED ON AMOUNT OF TAX.—The
9 credit allowed under subsection (a) for the taxable year
10 shall not exceed the excess of—

11 “(1) the sum of the regular tax liability (as de-
12 fined in section 26(b)) plus the tax imposed by sec-
13 tion 55, over

14 “(2) the sum of the credits allowable under sub-
15 part A and sections 27 and 30 for the taxable year.

16 “(h) OTHER DEFINITIONS AND SPECIAL RULES.—
17 For purposes of this section—

18 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
19 cle’ has the meaning given such term by section
20 30(c)(2).

21 “(2) OTHER TERMS.—The terms ‘automobile’,
22 ‘passenger automobile’, ‘light truck’, and ‘manufac-
23 turer’ have the meanings given such terms in regula-
24 tions prescribed by the Administrator of the Envi-
25 ronmental Protection Agency for purposes of the ad-



1 ministration of title II of the Clean Air Act (42
2 U.S.C. 7521 et seq.).

3 “(3) 2002 MODEL YEAR CITY FUEL ECON-
4 OMY.—

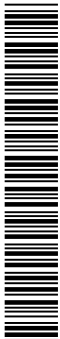
5 “(A) IN GENERAL.—The 2002 model year
6 city fuel economy with respect to a vehicle shall
7 be determined in accordance with the following
8 tables:

9 “(i) In the case of a passenger auto-
10 mobile:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

11 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg



“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

1 “(B) VEHICLE INERTIA WEIGHT CLASS.—

2 For purposes of subparagraph (A), the term
3 ‘vehicle inertia weight class’ has the same
4 meaning as when defined in regulations pre-
5 scribed by the Administrator of the Environ-
6 mental Protection Agency for purposes of the
7 administration of title II of the Clean Air Act
8 (42 U.S.C. 7521 et seq.).

9 “(4) FUEL ECONOMY.—Fuel economy with re-
10 spect to any vehicle shall be measured under rules
11 similar to the rules under section 4064(c).

12 “(5) REDUCTION IN BASIS.—For purposes of
13 this subtitle, if a credit is allowed under this section
14 for any expenditure with respect to any property, the
15 increase in the basis of such property which would
16 (but for this paragraph) result from such expendi-
17 ture shall be reduced by the amount of the credit so
18 allowed.

19 “(6) NO DOUBLE BENEFIT.—The amount of
20 any deduction or credit allowable under this chapter
21 (other than the credits allowable under this section
22 and section 30) shall be reduced by the amount of
23 credit allowed under subsection (a) for such vehicle
24 for the taxable year.



1 “(7) RECAPTURE.—The Secretary shall, by reg-
2 ulations, provide for recapturing the benefit of any
3 credit allowable under subsection (a) with respect to
4 any property which ceases to be property eligible for
5 such credit (including recapture in the case of a
6 lease period of less than the economic life of a vehi-
7 cle).

8 “(8) PROPERTY USED OUTSIDE UNITED
9 STATES, ETC., NOT QUALIFIED.—No credit shall be
10 allowed under subsection (a) with respect to any
11 property referred to in section 50(b) or with respect
12 to the portion of the cost of any property taken into
13 account under section 179.

14 “(9) ELECTION NOT TO TAKE CREDIT.—No
15 credit shall be allowed under subsection (a) for any
16 vehicle if the taxpayer elects to not have this section
17 apply to such vehicle.

18 “(10) BUSINESS CARRYOVERS ALLOWED.—If
19 the credit allowable under subsection (a) for a tax-
20 able year exceeds the limitation under subsection (g)
21 for such taxable year, such excess (to the extent of
22 the credit allowable with respect to property subject
23 to the allowance for depreciation) shall be allowed as
24 a credit carryback and carryforward under rules
25 similar to the rules of section 39.



1 “(11) INTERACTION WITH MOTOR VEHICLE
2 SAFETY STANDARDS.—Unless otherwise provided in
3 this section, a motor vehicle shall not be considered
4 eligible for a credit under this section unless such
5 vehicle is in compliance with the motor vehicle safety
6 provisions of sections 30101 through 30169 of title
7 49, United States Code.

8 “(i) REGULATIONS.—

9 “(1) IN GENERAL.—The Secretary shall pro-
10 mulgate such regulations as necessary to carry out
11 the provisions of this section.

12 “(2) DETERMINATION OF MOTOR VEHICLE ELI-
13 GIBILITY.—The Secretary, after coordination with
14 the Secretary of Transportation and the Adminis-
15 trator of the Environmental Protection Agency, shall
16 prescribe such regulations as necessary to determine
17 whether a motor vehicle meets the requirements to
18 be eligible for a credit under this section.

19 “(j) TERMINATION.—This section shall not apply to
20 any property placed in service after—

21 “(1) in the case of a new qualified alternative
22 fuel motor vehicle, December 31, 2006,

23 “(2) in the case of a new advanced lean burn
24 technology motor vehicle or a new qualified hybrid
25 motor vehicle, December 31, 2008, and



1 “(3) in the case of a new qualified fuel cell
2 motor vehicle, December 31, 2012.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 30(d) (relating to special rules) is
5 amended by adding at the end the following new
6 paragraphs:

7 “(5) NO DOUBLE BENEFIT.—No credit shall be
8 allowed under this section for any motor vehicle for
9 which a credit is also allowed under section 30B.”.

10 (2) Section 1016(a), as amended by this Act, is
11 amended by striking “and” at the end of paragraph
12 (31), by striking the period at the end of paragraph
13 (32) and inserting “, and”, and by adding at the
14 end the following:

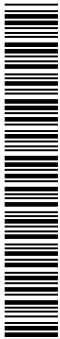
15 “(33) to the extent provided in section
16 30B(h)(5).”.

17 (3) Section 6501(m) is amended by inserting
18 “30B(h)(9),” after “30(d)(4),”.

19 (4) The table of sections for subpart B of part
20 IV of subchapter A of chapter 1 is amended by in-
21 serting after the item relating to section 30A the fol-
22 lowing:

“Sec. 30B. Alternative motor vehicle credit.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to property placed in service after



1 the date of the enactment of this Act, in taxable years
2 ending after such date.

3 (d) STICKER INFORMATION REQUIRED AT RETAIL
4 SALE.—

5 (1) IN GENERAL.—The Secretary of the Treas-
6 ury shall issue regulations under which each quali-
7 fied vehicle sold at retail shall display a notice—

8 (A) that such vehicle is a qualified vehicle,
9 and

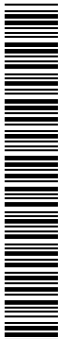
10 (B) that the buyer may not benefit from
11 the credit allowed under section 30B of the In-
12 ternal Revenue Code of 1986 if such buyer has
13 insufficient tax liability.

14 (2) QUALIFIED VEHICLE.—For purposes of
15 paragraph (1), the term “qualified vehicle” means a
16 vehicle with respect to which a credit is allowed
17 under section 30B of the Internal Revenue Code of
18 1986.

19 **SEC. 1319. MODIFICATIONS OF DEDUCTION FOR CERTAIN**
20 **REFUELING PROPERTY.**

21 (a) IN GENERAL.—Subsection (f) of section 179A is
22 amended to read as follows:

23 “(f) TERMINATION.—This section shall not apply to
24 any property placed in service—



1 “(1) in the case of property relating to hydro-
2 gen, after December 31, 2011, and

3 “(2) in the case of any other property, after
4 December 31, 2008.”.

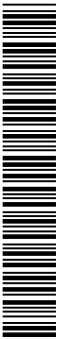
5 (b) INCENTIVE FOR PRODUCTION OF HYDROGEN AT
6 QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-
7 erty.—Section 179A(d) (defining qualified clean-fuel ve-
8 hicle refueling property) is amended by adding at the end
9 the following new flush sentence:

10 “In the case of clean-burning fuel which is hydrogen pro-
11 duced from another clean-burning fuel, paragraph (3)(A)
12 shall be applied by substituting “production, storage, or
13 dispensing” for “storage or dispensing” both places it ap-
14 pears.”.

15 (c) INCREASE IN LOCATION EXPENDITURES.—Sec-
16 tion 179A(b)(2)(A)(i) is amended by striking “\$100,000”
17 and inserting “\$150,000”.

18 (d) NONBUSINESS USE OF QUALIFIED CLEAN-FUEL
19 VEHICLE REFUELING PROPERTY.—Section 179A(d) is
20 amended by striking paragraph (1) and by redesignating
21 paragraphs (2) and (3) as paragraphs (1) and (2), respec-
22 tively.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to property placed in service after



1 the date of the enactment of this Act, in taxable years
2 ending after such date.

3 **Subtitle B—Reliability**

4 **SEC. 1321. NATURAL GAS GATHERING LINES TREATED AS 7-** 5 **YEAR PROPERTY.**

6 (a) IN GENERAL.—Subparagraph (C) of section
7 168(e)(3) (relating to classification of certain property) is
8 amended by striking “and” at the end of clause (i), by
9 redesignating clause (ii) as clause (iii), and by inserting
10 after clause (i) the following new clause:

11 “(ii) any natural gas gathering line,
12 and”.

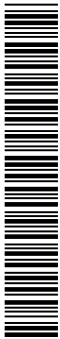
13 (b) NATURAL GAS GATHERING LINE.—Subsection (i)
14 of section 168, as amended by this Act, is amended by
15 adding after paragraph (15) the following new paragraph:

16 “(16) NATURAL GAS GATHERING LINE.—The
17 term ‘natural gas gathering line’ means—

18 “(A) the pipe, equipment, and appur-
19 tenances determined to be a gathering line by
20 the Federal Energy Regulatory Commission, or

21 “(B) the pipe, equipment, and appur-
22 tenances used to deliver natural gas from the
23 wellhead or a commonpoint to the point at
24 which such gas first reaches—

25 “(i) a gas processing plant,



1 “(ii) an interconnection with a trans-
2 mission pipeline for which a certificate as
3 an interstate transmission pipeline has
4 been issued by the Federal Energy Regu-
5 latory Commission,

6 “(iii) an interconnection with an
7 intrastate transmission pipeline, or

8 “(iv) a direct interconnection with a
9 local distribution company, a gas storage
10 facility, or an industrial consumer.”.

11 (c) ALTERNATIVE SYSTEM.—The table contained in
12 section 168(g)(3)(B) is amended by inserting after the
13 item relating to subparagraph (C)(i) the following:

“(C) (ii) 14”.

14 (d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Sub-
15 paragraph (B) of section 56(a)(1) is amended by inserting
16 before the period the following: “, or in section
17 168(e)(3)(C)(ii)”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to property placed in service after
20 the date of the enactment of this Act, in taxable years
21 ending after such date.

22 **SEC. 1322. NATURAL GAS DISTRIBUTION LINES TREATED**
23 **AS 15-YEAR PROPERTY.**

24 (a) IN GENERAL.—Subparagraph (E) of section
25 168(e)(3) (relating to classification of certain property) is



1 amended by striking “and” at the end of clause (ii), by
2 striking the period at the end of clause (iii) and by insert-
3 ing “, and”, and by adding at the end the following new
4 clause:

5 “(iv) any natural gas distribution
6 line.”.

7 (b) ALTERNATIVE SYSTEM.—The table contained in
8 section 168(g)(3)(B) is amended by inserting after the
9 item relating to subparagraph (E)(iii) the following:

“(E) (iv) 35”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to property placed in service after
12 the date of the enactment of this Act, in taxable years
13 ending after such date.

14 **SEC. 1323. ELECTRIC TRANSMISSION PROPERTY TREATED**
15 **AS 15-YEAR PROPERTY.**

16 (a) IN GENERAL.—Subparagraph (E) of section
17 168(e)(3) (relating to classification of certain property),
18 as amended by this Act, is amended by striking “and”
19 at the end of clause (iii), by striking the period at the
20 end of clause (iv) and by inserting “, and”, and by adding
21 at the end the following new clause:

22 “(v) any section 1245 property (as de-
23 fined in section 1245(a)(3)) used in the
24 transmission at 69 or more kilovolts of
25 electricity for sale the original use of which



1 commences with the taxpayer after the
2 date of the enactment of this clause.”.

3 (b) ALTERNATIVE SYSTEM.—The table contained in
4 section 168(g)(3)(B) is amended by inserting after the
5 item relating to subparagraph (E)(iv) the following:

“(E) (v) 30”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to property placed in service after
8 the date of the enactment of this Act, in taxable years
9 ending after such date.

10 **SEC. 1324. EXPENSING OF CAPITAL COSTS INCURRED IN**
11 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
12 **TION AGENCY SULFUR REGULATIONS.**

13 (a) REENACTMENT OF SECTION 338 OF AMERICAN
14 JOBS CREATION ACT OF 2004.—Section 179B is amended
15 to read as follows:

16 **“SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
17 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
18 **TION AGENCY SULFUR REGULATIONS.**

19 “(a) ALLOWANCE OF DEDUCTION.—In the case of a
20 small business refiner (as defined in section 45H(c)(1))
21 which elects the application of this section, there shall be
22 allowed as a deduction an amount equal to 75 percent of
23 qualified capital costs (as defined in section 45H(c)(2))
24 which are paid or incurred by the taxpayer during the tax-
25 able year.



1 “(b) REDUCED PERCENTAGE.—In the case of a small
2 business refiner with average daily domestic refinery runs
3 for the 1-year period ending on December 31, 2002, in
4 excess of 155,000 barrels, the number of percentage
5 points described in subsection (a) shall be reduced (not
6 below zero) by the product of such number (before the
7 application of this subsection) and the ratio of such excess
8 to 50,000 barrels.

9 “(c) BASIS REDUCTION.—

10 “(1) IN GENERAL.—For purposes of this title,
11 the basis of any property shall be reduced by the
12 portion of the cost of such property taken into ac-
13 count under subsection (a).

14 “(2) ORDINARY INCOME RECAPTURE.—For
15 purposes of section 1245, the amount of the deduc-
16 tion allowable under subsection (a) with respect to
17 any property which is of a character subject to the
18 allowance for depreciation shall be treated as a de-
19 duction allowed for depreciation under section 167.

20 “(d) COORDINATION WITH OTHER PROVISIONS.—
21 Section 280B shall not apply to amounts which are treated
22 as expenses under this section.”.

23 “(b) EFFECTIVE DATE.—The amendment made by
24 this section shall take effect as if included in the amend-



1 ments made by section 338 of the American Jobs Creation
2 Act of 2004.

3 **SEC. 1325. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
4 **SEL FUEL.**

5 (a) REENACTMENT OF SECTION 339 OF THE AMER-
6 ICAN JOBS CREATION ACT OF 2004.—Section 45H is
7 amended to read as follows:

8 **“SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
9 **SEL FUEL.**

10 “(a) IN GENERAL.—For purposes of section 38, the
11 amount of the low sulfur diesel fuel production credit de-
12 termined under this section with respect to any facility
13 of a small business refiner is an amount equal to 5 cents
14 for each gallon of low sulfur diesel fuel produced during
15 the taxable year by such small business refiner at such
16 facility.

17 “(b) MAXIMUM CREDIT.—

18 “(1) IN GENERAL.—The aggregate credit deter-
19 mined under subsection (a) for any taxable year with
20 respect to any facility shall not exceed—

21 “(A) 25 percent of the qualified capital
22 costs incurred by the small business refiner
23 with respect to such facility, reduced by



1 “(B) the aggregate credits determined
2 under this section for all prior taxable years
3 with respect to such facility.

4 “(2) REDUCED PERCENTAGE.—In the case of a
5 small business refiner with average daily domestic
6 refinery runs for the 1-year period ending on De-
7 cember 31, 2002, in excess of 155,000 barrels, the
8 number of percentage points described in paragraph
9 (1) shall be reduced (not below zero) by the product
10 of such number (before the application of this para-
11 graph) and the ratio of such excess to 50,000 bar-
12 rels.

13 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
14 poses of this section—

15 “(1) SMALL BUSINESS REFINER.—The term
16 ‘small business refiner’ means, with respect to any
17 taxable year, a refiner of crude oil—

18 “(A) with respect to which not more than
19 1,500 individuals are engaged in the refinery
20 operations of the business on any day during
21 such taxable year, and

22 “(B) the average daily domestic refinery
23 run or average retained production of which for
24 all facilities of the taxpayer for the 1-year pe-

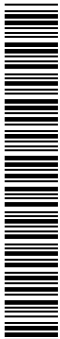


1 riod ending on December 31, 2002, did not ex-
2 ceed 205,000 barrels.

3 “(2) QUALIFIED CAPITAL COSTS.—The term
4 ‘qualified capital costs’ means, with respect to any
5 facility, those costs paid or incurred during the ap-
6 plicable period for compliance with the applicable
7 EPA regulations with respect to such facility, includ-
8 ing expenditures for the construction of new process
9 operation units or the dismantling and reconstruc-
10 tion of existing process units to be used in the pro-
11 duction of low sulfur diesel fuel, associated adjacent
12 or offsite equipment (including tankage, catalyst,
13 and power supply), engineering, construction period
14 interest, and sitework.

15 “(3) APPLICABLE EPA REGULATIONS.—The
16 term ‘applicable EPA regulations’ means the High-
17 way Diesel Fuel Sulfur Control Requirements of the
18 Environmental Protection Agency.

19 “(4) APPLICABLE PERIOD.—The term ‘applica-
20 ble period’ means, with respect to any facility, the
21 period beginning on January 1, 2003, and ending on
22 the earlier of the date which is 1 year after the date
23 on which the taxpayer must comply with the applica-
24 ble EPA regulations with respect to such facility or
25 December 31, 2009.



1 “(5) LOW SULFUR DIESEL FUEL.—The term
2 ‘low sulfur diesel fuel’ means diesel fuel with a sul-
3 fur content of 15 parts per million or less.

4 “(d) REDUCTION IN BASIS.—For purposes of this
5 subtitle, if a credit is determined under this section for
6 any expenditure with respect to any property, the increase
7 in basis of such property which would (but for this sub-
8 section) result from such expenditure shall be reduced by
9 the amount of the credit so determined.

10 “(e) SPECIAL RULE FOR DETERMINATION OF REFIN-
11 ERY RUNS.—For purposes this section and section
12 179B(b), in the calculation of average daily domestic re-
13 finery run or retained production, only refineries which on
14 April 1, 2003, were refineries of the refiner or a related
15 person (within the meaning of section 613A(d)(3)), shall
16 be taken into account.

17 “(f) CERTIFICATION.—

18 “(1) REQUIRED.—No credit shall be allowed
19 unless, not later than the date which is 30 months
20 after the first day of the first taxable year in which
21 the low sulfur diesel fuel production credit is deter-
22 mined with respect to a facility, the small business
23 refiner obtains certification from the Secretary, after
24 consultation with the Administrator of the Environ-
25 mental Protection Agency, that the taxpayer’s quali-



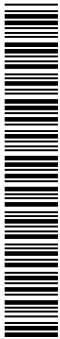
1 fied capital costs with respect to such facility will re-
2 sult in compliance with the applicable EPA regula-
3 tions.

4 “(2) CONTENTS OF APPLICATION.—An applica-
5 tion for certification shall include relevant informa-
6 tion regarding unit capacities and operating charac-
7 teristics sufficient for the Secretary, after consulta-
8 tion with the Administrator of the Environmental
9 Protection Agency, to determine that such qualified
10 capital costs are necessary for compliance with the
11 applicable EPA regulations.

12 “(3) REVIEW PERIOD.—Any application shall
13 be reviewed and notice of certification, if applicable,
14 shall be made within 60 days of receipt of such ap-
15 plication. In the event the Secretary does not notify
16 the taxpayer of the results of such certification with-
17 in such period, the taxpayer may presume the cer-
18 tification to be issued until so notified.

19 “(4) STATUTE OF LIMITATIONS.—With respect
20 to the credit allowed under this section—

21 “(A) the statutory period for the assess-
22 ment of any deficiency attributable to such
23 credit shall not expire before the end of the 3-
24 year period ending on the date that the review



1 period described in paragraph (3) ends with re-
2 spect to the taxpayer, and

3 “(B) such deficiency may be assessed be-
4 fore the expiration of such 3-year period not-
5 withstanding the provisions of any other law or
6 rule of law which would otherwise prevent such
7 assessment.

8 “(g) COOPERATIVE ORGANIZATIONS.—

9 “(1) APPORTIONMENT OF CREDIT.—

10 “(A) IN GENERAL.—In the case of a coop-
11 erative organization described in section
12 1381(a), any portion of the credit determined
13 under subsection (a) for the taxable year may,
14 at the election of the organization, be appor-
15 tioned among patrons eligible to share in pa-
16 tronage dividends on the basis of the quantity
17 or value of business done with or for such pa-
18 trons for the taxable year.

19 “(B) FORM AND EFFECT OF ELECTION.—

20 An election under subparagraph (A) for any
21 taxable year shall be made on a timely filed re-
22 turn for such year. Such election, once made,
23 shall be irrevocable for such taxable year.

24 “(2) TREATMENT OF ORGANIZATIONS AND PA-
25 TRONS.—



1 “(A) ORGANIZATIONS.—The amount of the
2 credit not apportioned to patrons pursuant to
3 paragraph (1) shall be included in the amount
4 determined under subsection (a) for the taxable
5 year of the organization.

6 “(B) PATRONS.—The amount of the credit
7 apportioned to patrons pursuant to paragraph
8 (1) shall be included in the amount determined
9 under subsection (a) for the first taxable year
10 of each patron ending on or after the last day
11 of the payment period (as defined in section
12 1382(d)) for the taxable year of the organiza-
13 tion or, if earlier, for the taxable year of each
14 patron ending on or after the date on which the
15 patron receives notice from the cooperative of
16 the apportionment.

17 “(3) SPECIAL RULE.—If the amount of a credit
18 which has been apportioned to any patron under this
19 subsection is decreased for any reason—

20 “(A) such amount shall not increase the
21 tax imposed on such patron, and

22 “(B) the tax imposed by this chapter on
23 such organization shall be increased by such
24 amount.



1 The increase under subparagraph (B) shall not be
2 treated as tax imposed by this chapter for purposes
3 of determining the amount of any credit under this
4 chapter or for purposes of section 55.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall take effect as if included in the amend-
7 ments made by section 339 of the American Jobs Creation
8 Act of 2004.

9 **SEC. 1326. DETERMINATION OF SMALL REFINER EXCEP-**
10 **TION TO OIL DEPLETION DEDUCTION.**

11 (a) IN GENERAL.—Paragraph (4) of section 613A(d)
12 (relating to limitations on application of subsection (c))
13 is amended to read as follows:

14 “(4) CERTAIN REFINERS EXCLUDED.—If the
15 taxpayer or 1 or more related persons engages in the
16 refining of crude oil, subsection (c) shall not apply
17 to the taxpayer for a taxable year if the average
18 daily refinery runs of the taxpayer and such persons
19 for the taxable year exceed 67,500 barrels. For pur-
20 poses of this paragraph, the average daily refinery
21 runs for any taxable year shall be determined by di-
22 viding the aggregate refinery runs for the taxable
23 year by the number of days in the taxable year.”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.

4 **SEC. 1327. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
5 **ERAL ENERGY REGULATORY COMMISSION**
6 **OR STATE ELECTRIC RESTRUCTURING POL-**
7 **ICY.**

8 (a) REENACTMENT OF SECTION 909 OF AMERICAN
9 JOBS CREATION ACT OF 2004.—Subsection (i) of section
10 451 is amended to read as follows:

11 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
12 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
13 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

14 “(1) IN GENERAL.—In the case of any quali-
15 fying electric transmission transaction for which the
16 taxpayer elects the application of this section, quali-
17 fied gain from such transaction shall be
18 recognized—

19 “(A) in the taxable year which includes the
20 date of such transaction to the extent the
21 amount realized from such transaction
22 exceeds—

23 “(i) the cost of exempt utility property
24 which is purchased by the taxpayer during



1 the 4-year period beginning on such date,
2 reduced (but not below zero) by

3 “(ii) any portion of such cost pre-
4 viously taken into account under this sub-
5 section, and

6 “(B) ratably over the 8-taxable year period
7 beginning with the taxable year which includes
8 the date of such transaction, in the case of any
9 such gain not recognized under subparagraph
10 (A).

11 “(2) QUALIFIED GAIN.—For purposes of this
12 subsection, the term ‘qualified gain’ means, with re-
13 spect to any qualifying electric transmission trans-
14 action in any taxable year—

15 “(A) any ordinary income derived from
16 such transaction which would be required to be
17 recognized under section 1245 or 1250 for such
18 taxable year (determined without regard to this
19 subsection), and

20 “(B) any income derived from such trans-
21 action in excess of the amount described in sub-
22 paragraph (A) which is required to be included
23 in gross income for such taxable year (deter-
24 mined without regard to this subsection).



1 “(3) QUALIFYING ELECTRIC TRANSMISSION
2 TRANSACTION.—For purposes of this subsection, the
3 term ‘qualifying electric transmission transaction’
4 means any sale or other disposition before January
5 1, 2007, of—

6 “(A) property used in the trade or business
7 of providing electric transmission services, or

8 “(B) any stock or partnership interest in a
9 corporation or partnership, as the case may be,
10 whose principal trade or business consists of
11 providing electric transmission services,
12 but only if such sale or disposition is to an inde-
13 pendent transmission company.

14 “(4) INDEPENDENT TRANSMISSION COM-
15 PANY.—For purposes of this subsection, the term
16 ‘independent transmission company’ means—

17 “(A) an independent transmission provider
18 approved by the Federal Energy Regulatory
19 Commission,

20 “(B) a person—

21 “(i) who the Federal Energy Regu-
22 latory Commission determines in its au-
23 thorization of the transaction under section
24 203 of the Federal Power Act (16 U.S.C.
25 824b) or by declaratory order is not a



1 market participant within the meaning of
2 such Commission's rules applicable to inde-
3 pendent transmission providers, and

4 “(ii) whose transmission facilities to
5 which the election under this subsection
6 applies are under the operational control of
7 a Federal Energy Regulatory Commission-
8 approved independent transmission pro-
9 vider before the close of the period speci-
10 fied in such authorization, but not later
11 than the close of the period applicable
12 under subsection (a)(2)(B) as extended
13 under paragraph (2), or

14 “(C) in the case of facilities subject to the
15 jurisdiction of the Public Utility Commission of
16 Texas—

17 “(i) a person which is approved by
18 that Commission as consistent with Texas
19 State law regarding an independent trans-
20 mission provider, or

21 “(ii) a political subdivision or affiliate
22 thereof whose transmission facilities are
23 under the operational control of a person
24 described in clause (i).



1 “(5) EXEMPT UTILITY PROPERTY.—For pur-
2 poses of this subsection:

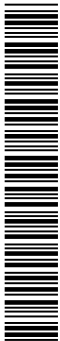
3 “(A) IN GENERAL.—The term ‘exempt
4 utility property’ means property used in the
5 trade or business of—

6 “(i) generating, transmitting, distrib-
7 uting, or selling electricity, or

8 “(ii) producing, transmitting, distrib-
9 uting, or selling natural gas.

10 “(B) NONRECOGNITION OF GAIN BY REA-
11 SON OF ACQUISITION OF STOCK.—Acquisition of
12 control of a corporation shall be taken into ac-
13 count under this subsection with respect to a
14 qualifying electric transmission transaction only
15 if the principal trade or business of such cor-
16 poration is a trade or business referred to in
17 subparagraph (A).

18 “(6) SPECIAL RULE FOR CONSOLIDATED
19 GROUPS.—In the case of a corporation which is a
20 member of an affiliated group filing a consolidated
21 return, any exempt utility property purchased by an-
22 other member of such group shall be treated as pur-
23 chased by such corporation for purposes of applying
24 paragraph (1)(A).

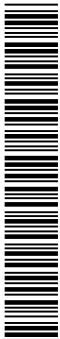


1 “(7) TIME FOR ASSESSMENT OF DEFICI-
2 CIENCIES.—If the taxpayer has made the election
3 under paragraph (1) and any gain is recognized by
4 such taxpayer as provided in paragraph (1)(B),
5 then—

6 “(A) the statutory period for the assess-
7 ment of any deficiency, for any taxable year in
8 which any part of the gain on the transaction
9 is realized, attributable to such gain shall not
10 expire prior to the expiration of 3 years from
11 the date the Secretary is notified by the tax-
12 payer (in such manner as the Secretary may by
13 regulations prescribe) of the purchase of exempt
14 utility property or of an intention not to pur-
15 chase such property, and

16 “(B) such deficiency may be assessed be-
17 fore the expiration of such 3-year period not-
18 withstanding any law or rule of law which
19 would otherwise prevent such assessment.

20 “(8) PURCHASE.—For purposes of this sub-
21 section, the taxpayer shall be considered to have
22 purchased any property if the unadjusted basis of
23 such property is its cost within the meaning of sec-
24 tion 1012.



“(9) ELECTION.—An election under paragraph
(1) shall be made at such time and in such manner
as the Secretary may require and, once made, shall
be irrevocable.

5 “(10) NONAPPLICATION OF INSTALLMENT
6 SALES TREATMENT.—Section 453 shall not apply to
7 any qualifying electric transmission transaction with
8 respect to which an election to apply this subsection
9 is made.”.

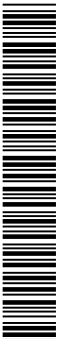
(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the amendments made by section 909 of the American Jobs Creation Act of 2004.

14 SEC. 1328. MODIFICATIONS TO SPECIAL RULES FOR NU-
15 CLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO
FUND BASED ON COST OF SERVICE; CONTRIBUTIONS
AFTER FUNDING PERIOD.—Subsection (b) of section
468A (relating to special rules for nuclear decommis-
sioning costs) is amended to read as follows:

21 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

22 “(1) IN GENERAL.—The amount which a tax-
23 payer may pay into the Fund for any taxable year
24 shall not exceed the ruling amount applicable to
25 such taxable year.



1 “(2) CONTRIBUTIONS AFTER FUNDING PE-
2 RIOD.—Notwithstanding any other provision of this
3 section, a taxpayer may pay into the Fund in any
4 taxable year after the last taxable year to which the
5 ruling amount applies. Payments may not be made
6 under the preceding sentence to the extent such pay-
7 ments would cause the assets of the Fund to exceed
8 the nuclear decommissioning costs allocable to the
9 taxpayer’s current or former interest in the nuclear
10 power plant to which the Fund relates. The limita-
11 tion under the preceding sentence shall be deter-
12 mined by taking into account a reasonable rate of
13 inflation for the nuclear decommissioning costs and
14 a reasonable after-tax rate of return on the assets
15 of the Fund until such assets are anticipated to be
16 expended.”.

17 (b) CLARIFICATION OF TREATMENT OF FUND
18 TRANSFERS.—Section 468A(e) (relating to Nuclear De-
19 commissioning Reserve Fund) is amended by adding at
20 the end the following new paragraph:

21 “(8) TREATMENT OF FUND TRANSFERS.—

22 “(A) IN GENERAL.—If, in connection with
23 the transfer of the taxpayer’s interest in a nu-
24 clear power plant, the taxpayer transfers the
25 Fund with respect to such power plant to the



1 transferee of such interest and the transferee
2 elects to continue the application of this section
3 to such Fund—

4 “(i) the transfer of such Fund shall
5 not cause such Fund to be disqualified
6 from the application of this section, and

7 “(ii) no amount shall be treated as
8 distributed from such Fund, or be includ-
9 able in gross income, by reason of such
10 transfer.

11 “(B) SPECIAL RULES IF TRANSFEROR IS
12 TAX-EXEMPT ENTITY.—

13 “(i) IN GENERAL.—If—

14 “(I) a person exempt from tax-
15 ation under this title transfers an in-
16 terest in a nuclear power plant,

17 “(II) such person has set aside
18 amounts for nuclear decommissioning
19 which are transferred to the trans-
20 feree of the interest, and

21 “(III) the transferee elects the
22 application of this subparagraph no
23 later than the due date (including ex-
24 tensions) of its return of tax for the



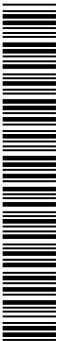
1 taxable year in which the transfer oc-
2 curs,

3 the amounts so set aside shall be treated
4 as if contributed by such person to a Fund
5 immediately before the transfer and then
6 transferred in the Fund to the transferee.

7 “(ii) LIMITATION.—The amount treat-
8 ed as transferred to a Fund under clause
9 (i) shall not exceed the amount which
10 bears the same ratio to the present value
11 of the nuclear decommissioning costs of
12 the transferor with respect to the nuclear
13 power plant as the number of years the
14 nuclear power plant has been in service
15 bears to the estimated useful life of such
16 power plant.

17 “(iii) BASIS.—The transferee’s basis
18 in any asset treated as transferred in the
19 Fund shall be the same as the adjusted
20 basis of such asset in the hands of the
21 transferor.

22 “(iv) RULING AMOUNT REQUIRED.—
23 This subparagraph shall not apply to any
24 transfer unless the transferee requests



1 from the Secretary a schedule of ruling
2 amounts.

3 “(v) ELECTION DISREGARDED.—An
4 election under this subparagraph shall be
5 disregarded in determining the Federal in-
6 come tax of the transferor.”.

7 (c) TREATMENT OF CERTAIN DECOMMISSIONING
8 COSTS.—

9 (1) IN GENERAL.—Section 468A is amended by
10 redesignating subsections (f) and (g) as subsections
11 (g) and (h), respectively, and by inserting after sub-
12 section (e) the following new subsection:

13 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

14 “(1) IN GENERAL.—Notwithstanding subsection
15 (b), any taxpayer maintaining a Fund to which this
16 section applies with respect to a nuclear power plant
17 may transfer into such Fund not more than an
18 amount equal to the present value of the portion of
19 the total nuclear decommissioning costs with respect
20 to such nuclear power plant previously excluded for
21 such nuclear power plant under subsection (d)(2)(A)
22 as in effect immediately before the date of the enact-
23 ment of the Energy Tax Policy Act of 2005.

24 “(2) DEDUCTION FOR AMOUNTS TRANS-
25 FERRED.—



1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (C), the deduction allowed by
3 subsection (a) for any transfer permitted by
4 this subsection shall be allowed ratably over the
5 remaining estimated useful life (within the
6 meaning of subsection (d)(2)(A)) of the nuclear
7 power plant beginning with the taxable year
8 during which the transfer is made.

9 “(B) DENIAL OF DEDUCTION FOR PRE-
10 VIOUSLY DEDUCTED AMOUNTS.—No deduction
11 shall be allowed for any transfer under this sub-
12 section of an amount for which a deduction was
13 previously allowed to the taxpayer (or a prede-
14 cessor) or a corresponding amount was not in-
15 cluded in gross income of the taxpayer (or a
16 predecessor). For purposes of the preceding
17 sentence, a ratable portion of each transfer
18 shall be treated as being from previously de-
19 ducted or excluded amounts to the extent there-
20 of.

21 “(C) TRANSFERS OF QUALIFIED FUNDS.—
22 If—

23 “(i) any transfer permitted by this
24 subsection is made to any Fund to which
25 this section applies, and



1 “(ii) such Fund is transferred there-
2 after,
3 any deduction under this subsection for taxable
4 years ending after the date that such Fund is
5 transferred shall be allowed to the transferor
6 for the taxable year which includes such date.

7 “(D) SPECIAL RULES.—

8 “(i) GAIN OR LOSS NOT RECOG-
9 NIZED.—No gain or loss shall be recog-
10 nized on any transfer permitted by this
11 subsection.

12 “(ii) TRANSFERS OF APPRECIATED
13 PROPERTY.—If appreciated property is
14 transferred in a transfer permitted by this
15 subsection, the amount of the deduction
16 shall not exceed the adjusted basis of such
17 property.

18 “(3) NEW RULING AMOUNT REQUIRED.—Para-
19 graph (1) shall not apply to any transfer unless the
20 taxpayer requests from the Secretary a new schedule
21 of ruling amounts in connection with such transfer.

22 “(4) NO BASIS IN QUALIFIED FUNDS.—Not-
23 withstanding any other provision of law, the tax-
24 payer’s basis in any Fund to which this section ap-



1 plies shall not be increased by reason of any transfer
2 permitted by this subsection.”.

3 (2) NEW RULING AMOUNT TO TAKE INTO AC-
4 COUNT TOTAL COSTS.—Subparagraph (A) of section
5 468A(d)(2) (defining ruling amount) is amended to
6 read as follows:

7 “(A) fund the total nuclear decommis-
8 sioning costs with respect to such power plant
9 over the estimated useful life of such power
10 plant, and”.

11 (d) TECHNICAL AMENDMENTS.—Section 468A(e)(2)
12 (relating to taxation of Fund) is amended—

13 (1) by striking “rate set forth in subparagraph
14 (B)” in subparagraph (A) and inserting “rate of 20
15 percent”,

16 (2) by striking subparagraph (B), and

17 (3) by redesignating subparagraphs (C) and
18 (D) as subparagraphs (B) and (C), respectively.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2005.

22 **SEC. 1329. TREATMENT OF CERTAIN INCOME OF COOPERA-**
23 **TIVES.**

24 (a) REENACTMENT OF SECTION 319 OF THE AMER-
25 ICAN JOBS CREATION ACT OF 2004.—



1 (1) So much of subparagraph (C) of section
2 501(c)(12) as follows clause (i) is amended to read
3 as follows:

4 “(ii) from any provision or sale of
5 electric energy transmission services or an-
6 cillary services if such services are provided
7 on a nondiscriminatory open access basis
8 under an open access transmission tariff
9 approved or accepted by FERC or under
10 an independent transmission provider
11 agreement approved or accepted by FERC
12 (other than income received or accrued di-
13 rectly or indirectly from a member),

14 “(iii) from the provision or sale of
15 electric energy distribution services or an-
16 cillary services if such services are provided
17 on a nondiscriminatory open access basis
18 to distribute electric energy not owned by
19 the mutual or electric cooperative
20 company—

21 “(I) to end-users who are served
22 by distribution facilities not owned by
23 such company or any of its members
24 (other than income received or ac-



1 accrued directly or indirectly from a
2 member), or

3 “(II) generated by a generation
4 facility not owned or leased by such
5 company or any of its members and
6 which is directly connected to dis-
7 tribution facilities owned by such com-
8 pany or any of its members (other
9 than income received or accrued di-
10 rectly or indirectly from a member),

11 “(iv) from any nuclear decommis-
12 sioning transaction, or

13 “(v) from any asset exchange or con-
14 version transaction.

15 Clauses (ii) through (v) shall not apply to taxable years
16 beginning after December 31, 2006.”.

17 (2) Subparagraphs (E), (F), and (G) of para-
18 graph (12) of section 501(c) are amended to read as
19 follows:

20 “(E) For purposes of subparagraph (C)(ii),
21 the term ‘FERC’ means the Federal Energy
22 Regulatory Commission and references to such
23 term shall be treated as including the Public
24 Utility Commission of Texas with respect to
25 any ERCOT utility (as defined in section



1 212(k)(2)(B) of the Federal Power Act (16
2 U.S.C. 824k(k)(2)(B))).

3 “(F) For purposes of subparagraph
4 (C)(iii), the term ‘nuclear decommissioning
5 transaction’ means—

6 “(i) any transfer into a trust, fund, or
7 instrument established to pay any nuclear
8 decommissioning costs if the transfer is in
9 connection with the transfer of the mutual
10 or cooperative electric company’s interest
11 in a nuclear power plant or nuclear power
12 plant unit,

13 “(ii) any distribution from any trust,
14 fund, or instrument established to pay any
15 nuclear decommissioning costs, or

16 “(iii) any earnings from any trust,
17 fund, or instrument established to pay any
18 nuclear decommissioning costs.

19 “(G) For purposes of subparagraph
20 (C)(iv), the term ‘asset exchange or conversion
21 transaction’ means any voluntary exchange or
22 involuntary conversion of any property related
23 to generating, transmitting, distributing, or sell-
24 ing electric energy by a mutual or cooperative
25 electric company, the gain from which qualifies



1 for deferred recognition under section 1031 or
2 1033, but only if the replacement property ac-
3 quired by such company pursuant to such sec-
4 tion constitutes property which is used, or to be
5 used, for—

6 “(i) generating, transmitting, distrib-
7 uting, or selling electric energy, or

8 “(ii) producing, transmitting, distrib-
9 uting, or selling natural gas.”.

10 (3) Subparagraph (H) of paragraph (12) of sec-
11 tion 501(c) is amended to read as follows:

12 “(H)(i) In the case of a mutual or coopera-
13 tive electric company described in this para-
14 graph or an organization described in section
15 1381(a)(2)(C), income received or accrued from
16 a load loss transaction shall be treated as an
17 amount collected from members for the sole
18 purpose of meeting losses and expenses.

19 “(ii) For purposes of clause (i), the term
20 ‘load loss transaction’ means any wholesale or
21 retail sale of electric energy (other than to
22 members) to the extent that the aggregate sales
23 during the recovery period do not exceed the
24 load loss mitigation sales limit for such period.



1 “(iii) For purposes of clause (ii), the load
2 loss mitigation sales limit for the recovery pe-
3 riod is the sum of the annual load losses for
4 each year of such period.

5 “(iv) For purposes of clause (iii), a mutual
6 or cooperative electric company’s annual load
7 loss for each year of the recovery period is the
8 amount (if any) by which—

9 “(I) the megawatt hours of electric
10 energy sold during such year to members
11 of such electric company are less than

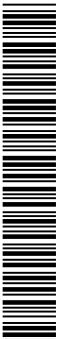
12 “(II) the megawatt hours of electric
13 energy sold during the base year to such
14 members.

15 “(v) For purposes of clause (iv)(II), the
16 term ‘base year’ means—

17 “(I) the calendar year preceding the
18 start-up year, or

19 “(II) at the election of the mutual or
20 cooperative electric company, the second or
21 third calendar years preceding the start-up
22 year.

23 “(vi) For purposes of this subparagraph,
24 the recovery period is the 7-year period begin-
25 ning with the start-up year.



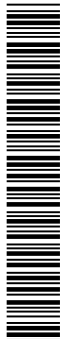
1 “(vii) For purposes of this subparagraph,
2 the start-up year is the first year that the mu-
3 tual or cooperative electric company offers non-
4 discriminatory open access or the calendar year
5 which includes the date of the enactment of this
6 subparagraph, if later, at the election of such
7 company.

8 “(viii) A company shall not fail to be treat-
9 ed as a mutual or cooperative electric company
10 for purposes of this paragraph or as a corpora-
11 tion operating on a cooperative basis for pur-
12 poses of section 1381(a)(2)(C) by reason of the
13 treatment under clause (i).

14 “(ix) For purposes of subparagraph (A), in
15 the case of a mutual or cooperative electric
16 company, income received, or accrued, indirectly
17 from a member shall be treated as an amount
18 collected from members for the sole purpose of
19 meeting losses and expenses.

20 “(x) This subparagraph shall not apply to
21 taxable years beginning after December 31,
22 2006.”.

23 (4) Paragraph (18) of subsection (b) of section
24 512 (relating to modifications) is amended to read
25 as follows:



1 “(18) TREATMENT OF MUTUAL OR COOPERA-
2 TIVE ELECTRIC COMPANIES.—In the case of a mu-
3 tual or cooperative electric company described in sec-
4 tion 501(c)(12), there shall be excluded income
5 which is treated as member income under subpara-
6 graph (H) thereof.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect as if included in the amend-
9 ments made by section 319 of the American Jobs Creation
10 Act of 2004.

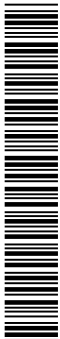
11 **SEC. 1330. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
12 **MENTS FOR NATURAL GAS.**

13 (a) IN GENERAL.—Subsection (b) of section 148 (re-
14 lating to higher yielding investments) is amended by add-
15 ing at the end the following new paragraph:

16 “(4) SAFE HARBOR FOR PREPAID NATURAL
17 GAS.—

18 “(A) IN GENERAL.—The term ‘investment-
19 type property’ does not include a prepayment
20 under a qualified natural gas supply contract.

21 “(B) QUALIFIED NATURAL GAS SUPPLY
22 CONTRACT.—For purposes of this paragraph,
23 the term ‘qualified natural gas supply contract’
24 means any contract to acquire natural gas for
25 resale by a utility owned by a governmental



1 unit if the amount of gas permitted to be ac-
2 quired under the contract by the utility during
3 any year does not exceed the sum of—

4 “(i) the annual average amount dur-
5 ing the testing period of natural gas pur-
6 chased (other than for resale) by cus-
7 tomers of such utility who are located
8 within the service area of such utility, and

9 “(ii) the amount of natural gas to be
10 used to transport the prepaid natural gas
11 to the utility during such year.

12 “(C) NATURAL GAS USED TO GENERATE
13 ELECTRICITY.—Natural gas used to generate
14 electricity shall be taken into account in deter-
15 mining the average under subparagraph
16 (B)(i)—

17 “(i) only if the electricity is generated
18 by a utility owned by a governmental unit,
19 and

20 “(ii) only to the extent that the elec-
21 tricity is sold (other than for resale) to
22 customers of such utility who are located
23 within the service area of such utility.

24 “(D) ADJUSTMENTS FOR CHANGES IN
25 CUSTOMER BASE.—



1 “(i) NEW BUSINESS CUSTOMERS.—

2 If—

3 “(I) after the close of the testing
4 period and before the date of issuance
5 of the issue, the utility owned by a
6 governmental unit enters into a con-
7 tract to supply natural gas (other
8 than for resale) for a business use at
9 a property within the service area of
10 such utility, and

11 “(II) the utility did not supply
12 natural gas to such property during
13 the testing period or the ratable
14 amount of natural gas to be supplied
15 under the contract is significantly
16 greater than the ratable amount of
17 gas supplied to such property during
18 the testing period,

19 then a contract shall not fail to be treated
20 as a qualified natural gas supply contract
21 by reason of supplying the additional nat-
22 ural gas under the contract referred to in
23 subclause (I).

24 “(ii) LOST CUSTOMERS.—The average
25 under subparagraph (B)(i) shall not exceed



1 the annual amount of natural gas reason-
2 ably expected to be purchased (other than
3 for resale) by persons who are located
4 within the service area of such utility and
5 who, as of the date of issuance of the
6 issue, are customers of such utility.

7 “(E) RULING REQUESTS.—The Secretary
8 may increase the average under subparagraph
9 (B)(i) for any period if the utility owned by the
10 governmental unit establishes to the satisfaction
11 of the Secretary that, based on objective evi-
12 dence of growth in natural gas consumption or
13 population, such average would otherwise be in-
14 sufficient for such period.

15 “(F) ADJUSTMENT FOR NATURAL GAS
16 OTHERWISE ON HAND.—

17 “(i) IN GENERAL.—The amount oth-
18 erwise permitted to be acquired under the
19 contract for any period shall be reduced
20 by—

21 “(I) the applicable share of nat-
22 ural gas held by the utility on the
23 date of issuance of the issue, and

24 “(II) the natural gas (not taken
25 into account under subclause (I))



1 which the utility has a right to ac-
2 quire during such period (determined
3 as of the date of issuance of the
4 issue).

5 “(ii) APPLICABLE SHARE.—For pur-
6 poses of the clause (i), the term ‘applicable
7 share’ means, with respect to any period,
8 the natural gas allocable to such period if
9 the gas were allocated ratably over the pe-
10 riod to which the prepayment relates.

11 “(G) INTENTIONAL ACTS.—Subparagraph
12 (A) shall cease to apply to any issue if the util-
13 ity owned by the governmental unit engages in
14 any intentional act to render the volume of nat-
15 ural gas acquired by such prepayment to be in
16 excess of the sum of—

17 “(i) the amount of natural gas needed
18 (other than for resale) by customers of
19 such utility who are located within the
20 service area of such utility, and

21 “(ii) the amount of natural gas used
22 to transport such natural gas to the utility.

23 “(H) TESTING PERIOD.—For purposes of
24 this paragraph, the term ‘testing period’ means,
25 with respect to an issue, the most recent 5 cal-



1 endar years ending before the date of issuance
2 of the issue.

3 “(I) SERVICE AREA.—For purposes of this
4 paragraph, the service area of a utility owned
5 by a governmental unit shall be comprised of—

6 “(i) any area throughout which such
7 utility provided at all times during the
8 testing period—

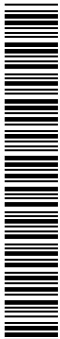
9 “(I) in the case of a natural gas
10 utility, natural gas transmission or
11 distribution services, and

12 “(II) in the case of an electric
13 utility, electricity distribution services,

14 “(ii) any area within a county contig-
15 uous to the area described in clause (i) in
16 which retail customers of such utility are
17 located if such area is not also served by
18 another utility providing natural gas or
19 electricity services, as the case may be, and

20 “(iii) any area recognized as the serv-
21 ice area of such utility under State or Fed-
22 eral law.”.

23 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY
24 TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of
25 section 141(c) (providing exceptions to the private loan fi-



1 nancing test) is amended by striking “or” at the end of
2 subparagraph (A), by striking the period at the end of
3 subparagraph (B) and inserting “, or”, and by adding at
4 the end the following new subparagraph:

5 “(C) is a qualified natural gas supply con-
6 tract (as defined in section 148(b)(4)).”.

7 (c) EXCEPTION FOR QUALIFIED ELECTRIC AND NAT-
8 URAL GAS SUPPLY CONTRACTS.—Section 141(d) is
9 amended by adding at the end the following new para-
10 graph:

11 “(7) EXCEPTION FOR QUALIFIED ELECTRIC
12 AND NATURAL GAS SUPPLY CONTRACTS.—The term
13 ‘nongovernmental output property’ shall not include
14 any contract for the prepayment of electricity or nat-
15 ural gas which is not investment property under sec-
16 tion 148(b)(2).”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to obligations issued after the date
19 of the enactment of this Act.

20 **Subtitle C—Production**

21 **PART 1—OIL AND GAS PROVISIONS**

22 **SEC. 1341. OIL AND GAS FROM MARGINAL WELLS.**

23 (a) REENACTMENT OF SECTION 341 OF THE AMER-
24 ICAN JOBS CREATION ACT OF 2004.—Section 45I is
25 amended to read as follows:



1 **“SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM**
2 **MARGINAL WELLS.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 the marginal well production credit for any taxable year
5 is an amount equal to the product of—

6 “(1) the credit amount, and

7 “(2) the qualified credit oil production and the
8 qualified natural gas production which is attrib-
9 utable to the taxpayer.

10 “(b) CREDIT AMOUNT.—For purposes of this
11 section—

12 “(1) IN GENERAL.—The credit amount is—

13 “(A) \$3 per barrel of qualified crude oil
14 production, and

15 “(B) 50 cents per 1,000 cubic feet of
16 qualified natural gas production.

17 “(2) REDUCTION AS OIL AND GAS PRICES IN-
18 CREASE.—

19 “(A) IN GENERAL.—The \$3 and 50 cents
20 amounts under paragraph (1) shall each be re-
21 duced (but not below zero) by an amount which
22 bears the same ratio to such amount (deter-
23 mined without regard to this paragraph) as—

24 “(i) the excess (if any) of the applica-
25 ble reference price over \$15 (\$1.67 for
26 qualified natural gas production), bears to



1 “(ii) \$3 (\$0.33 for qualified natural
2 gas production).

3 The applicable reference price for a taxable
4 year is the reference price of the calendar year
5 preceding the calendar year in which the tax-
6 able year begins.

7 “(B) INFLATION ADJUSTMENT.—In the
8 case of any taxable year beginning in a calendar
9 year after 2005, each of the dollar amounts
10 contained in subparagraph (A) shall be in-
11 creased to an amount equal to such dollar
12 amount multiplied by the inflation adjustment
13 factor for such calendar year (determined under
14 section 43(b)(3)(B) by substituting ‘2004’ for
15 ‘1990’).

16 “(C) REFERENCE PRICE.—For purposes of
17 this paragraph, the term ‘reference price’
18 means, with respect to any calendar year—

19 “(i) in the case of qualified crude oil
20 production, the reference price determined
21 under section 29(d)(2)(C), and

22 “(ii) in the case of qualified natural
23 gas production, the Secretary’s estimate of
24 the annual average wellhead price per



1 1,000 cubic feet for all domestic natural
2 gas.

3 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
4 PRODUCTION.—For purposes of this section—

5 “(1) IN GENERAL.—The terms ‘qualified crude
6 oil production’ and ‘qualified natural gas production’
7 mean domestic crude oil or natural gas which is pro-
8 duced from a qualified marginal well.

9 “(2) LIMITATION ON AMOUNT OF PRODUCTION
10 WHICH MAY QUALIFY.—

11 “(A) IN GENERAL.—Crude oil or natural
12 gas produced during any taxable year from any
13 well shall not be treated as qualified crude oil
14 production or qualified natural gas production
15 to the extent production from the well during
16 the taxable year exceeds 1,095 barrels or bar-
17 rel-of-oil equivalents (as defined in section
18 29(d)(5)).

19 “(B) PROPORTIONATE REDUCTIONS.—

20 “(i) SHORT TAXABLE YEARS.—In the
21 case of a short taxable year, the limitations
22 under this paragraph shall be proportion-
23 ately reduced to reflect the ratio which the
24 number of days in such taxable year bears
25 to 365.



1 “(ii) WELLS NOT IN PRODUCTION EN-
2 TIRE YEAR.—In the case of a well which is
3 not capable of production during each day
4 of a taxable year, the limitations under
5 this paragraph applicable to the well shall
6 be proportionately reduced to reflect the
7 ratio which the number of days of produc-
8 tion bears to the total number of days in
9 the taxable year.

10 “(3) DEFINITIONS.—

11 “(A) QUALIFIED MARGINAL WELL.—The
12 term ‘qualified marginal well’ means a domestic
13 well—

14 “(i) the production from which during
15 the taxable year is treated as marginal
16 production under section 613A(c)(6), or

17 “(ii) which, during the taxable year—

18 “(I) has average daily production
19 of not more than 25 barrel-of-oil
20 equivalents (as so defined), and

21 “(II) produces water at a rate
22 not less than 95 percent of total well
23 effluent.

24 “(B) CRUDE OIL, ETC.—The terms ‘crude
25 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have



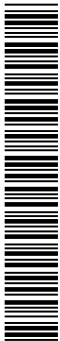
1 the meanings given such terms by section
2 613A(e).

3 “(d) OTHER RULES.—

4 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
5 PAYER.—In the case of a qualified marginal well in
6 which there is more than one owner of operating in-
7 terests in the well and the crude oil or natural gas
8 production exceeds the limitation under subsection
9 (c)(2), qualifying crude oil production or qualifying
10 natural gas production attributable to the taxpayer
11 shall be determined on the basis of the ratio which
12 taxpayer’s revenue interest in the production bears
13 to the aggregate of the revenue interests of all oper-
14 ating interest owners in the production.

15 “(2) OPERATING INTEREST REQUIRED.—Any
16 credit under this section may be claimed only on
17 production which is attributable to the holder of an
18 operating interest.

19 “(3) PRODUCTION FROM NONCONVENTIONAL
20 SOURCES EXCLUDED.—In the case of production
21 from a qualified marginal well which is eligible for
22 the credit allowed under section 29 for the taxable
23 year, no credit shall be allowable under this section
24 unless the taxpayer elects not to claim the credit
25 under section 29 with respect to the well.”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect as if included in the amend-
3 ments made by section 341 of the American Jobs Creation
4 Act of 2004.

5 **SEC. 1342. TEMPORARY SUSPENSION OF LIMITATION**
6 **BASED ON 65 PERCENT OF TAXABLE INCOME**
7 **AND EXTENSION OF SUSPENSION OF TAX-**
8 **ABLE INCOME LIMIT WITH RESPECT TO MAR-**
9 **GINAL PRODUCTION.**

10 (a) LIMITATION BASED ON 65 PERCENT OF TAX-
11 ABLE INCOME.—Subsection (d) of section 613A (relating
12 to limitation on percentage depletion in case of oil and
13 gas wells) is amended by adding at the end the following
14 new paragraph:

15 “(6) TEMPORARY SUSPENSION OF TAXABLE IN-
16 COME LIMIT.—Paragraph (1) shall not apply to tax-
17 able years beginning after December 31, 2005, and
18 before January 1, 2007, including with respect to
19 amounts carried under the second sentence of para-
20 graph (1) to such taxable years.”.

21 (b) EXTENSION OF SUSPENSION OF TAXABLE IN-
22 COME LIMIT WITH RESPECT TO MARGINAL PRODUC-
23 TION.—

[Note: Enacted by section 314 of the Working Fam-
ilies Tax Relief Act of 2004]



1 (c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to taxable years beginning after
3 December 31, 2005.

4 **SEC. 1343. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

5 (a) IN GENERAL.—Section 167 (relating to deprecia-
6 tion) is amended by redesignating subsection (h) as sub-
7 section (i) and by inserting after subsection (g) the fol-
8 lowing new subsection:

9 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS
10 FOR DOMESTIC OIL AND GAS WELLS.—

11 “(1) IN GENERAL.—Any delay rental payment
12 paid or incurred in connection with the development
13 of oil or gas wells within the United States (as de-
14 fined in section 638) shall be allowed as a deduction
15 ratably over the 24-month period beginning on the
16 date that such payment was paid or incurred.

17 “(2) HALF-YEAR CONVENTION.—For purposes
18 of paragraph (1), any payment paid or incurred dur-
19 ing the taxable year shall be treated as paid or in-
20 curred on the mid-point of such taxable year.

21 “(3) EXCLUSIVE METHOD.—Except as provided
22 in this subsection, no depreciation or amortization
23 deduction shall be allowed with respect to such pay-
24 ments.



1 “(4) TREATMENT UPON ABANDONMENT.—If
2 any property to which a delay rental payment relates
3 is retired or abandoned during the 24-month period
4 described in paragraph (1), no deduction shall be al-
5 lowed on account of such retirement or abandon-
6 ment and the amortization deduction under this sub-
7 section shall continue with respect to such payment.

8 “(5) DELAY RENTAL PAYMENTS.—For purposes
9 of this subsection, the term ‘delay rental payment’
10 means an amount paid for the privilege of deferring
11 development of an oil or gas well under an oil or gas
12 lease.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to amounts paid or incurred in tax-
15 able years beginning after the date of the enactment of
16 this Act.

17 **SEC. 1344. AMORTIZATION OF GEOLOGICAL AND GEO-**
18 **PHYSICAL EXPENDITURES.**

19 (a) IN GENERAL.—Section 167 (relating to deprecia-
20 tion), as amended by this Act, is amended by redesignig-
21 nating subsection (i) as subsection (j) and by inserting
22 after subsection (h) the following new subsection:

23 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-
24 PHYSICAL EXPENDITURES.—



1 “(1) IN GENERAL.—Any geological and geo-
2 physical expenses paid or incurred in connection
3 with the exploration for, or development of, oil or
4 gas within the United States (as defined in section
5 638) shall be allowed as a deduction ratably over the
6 24-month period beginning on the date that such ex-
7 pense was paid or incurred.

8 “(2) SPECIAL RULES.—For purposes of this
9 subsection, rules similar to the rules of paragraphs
10 (2), (3), and (4) of subsection (h) shall apply.”.

11 (b) CONFORMING AMENDMENT.—Section 263A(c)(3)
12 is amended by inserting “167(h), 167(i),” after “under
13 section”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to amounts paid or incurred in tax-
16 able years beginning after the date of the enactment of
17 this Act.

18 **SEC. 1345. EXTENSION AND MODIFICATION OF CREDIT FOR**
19 **PRODUCING FUEL FROM A NONCONVEN-**
20 **TIONAL SOURCE.**

 [Note: Section enacted by section 313 of the Work-
ing Families Tax Relief Act of 2004 and section 710(a)
of the American Jobs Creation Act of 2004]



PART 2—ALTERNATIVE MINIMUM TAX

PROVISIONS

SEC. 1346. NEW NONREFUNDABLE PERSONAL CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAXES.

(a) IN GENERAL.—

(1) SECTION 25C.—Section 25C(b), as added by section 1301 of this Act, is amended by adding at the end the following new paragraph:

“(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.”.

(2) SECTION 25D.—Section 25D(b), as added by section 1304 of this Act, is amended by adding at the end the following new paragraph:

“(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—



1 “(A) the sum of the regular tax liability
2 (as defined in section 26(b)) plus the tax im-
3 posed by section 55, over

4 “(B) the sum of the credits allowable
5 under this subpart (other than this section) and
6 section 27 for the taxable year.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 23(b)(4)(B) is amended by inserting
9 “and sections 25C and 25D” after “this section”.

10 (2) Section 24(b)(3)(B) is amended by striking
11 “and 25B” and inserting “, 25B, 25C, and 25D”.

12 (3) Section 25(e)(1)(C) is amended by inserting
13 “25C, and 25D” after “25B,”.

14 (4) Section 25B(g)(2) is amended by striking
15 “section 23” and inserting “sections 23, 25C, and
16 25D”.

17 (5) Section 26(a)(1) is amended by striking
18 “and 25B” and inserting “25B, 25C, and 25D”.

19 (6) Section 904(h) is amended by striking “and
20 25B” and inserting “25B, 25C, and 25D”.

21 (7) Section 1400C(d) is amended by striking
22 “and 25B” and inserting “25B, 25C, and 25D”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2005.



1 **SEC. 1347. BUSINESS RELATED ENERGY CREDITS ALLOWED**
2 **AGAINST REGULAR AND MINIMUM TAX.**

3 (a) REENACTMENT OF SECTION 711 OF THE AMER-
4 ICAN JOBS CREATION ACT OF 2004.—Paragraph (4) of
5 section 38(c) (relating to limitation based on amount of
6 tax) is amended to read as follows:

7 “(4) SPECIAL RULES FOR SPECIFIED CRED-
8 ITS.—

9 “(A) IN GENERAL.—In the case of speci-
10 fied credits—

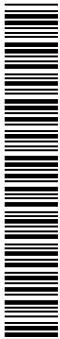
11 “(i) this section and section 39 shall
12 be applied separately with respect to such
13 credits, and

14 “(ii) in applying paragraph (1) to
15 such credits—

16 “(I) the tentative minimum tax
17 shall be treated as being zero, and

18 “(II) the limitation under para-
19 graph (1) (as modified by subclause
20 (I)) shall be reduced by the credit al-
21 lowed under subsection (a) for the
22 taxable year (other than the specified
23 credits).

24 “(B) SPECIFIED CREDITS.—For purposes
25 of this subsection, the term ‘specified credits’
26 includes—



1 “(i) for taxable years beginning after
2 December 31, 2004, the credit determined
3 under section 40,

4 “(ii) the credit determined under sec-
5 tion 45 to the extent that such credit is at-
6 tributable to electricity or refined coal
7 produced—

8 “(I) at a facility which is origi-
9 nally placed in service after the date
10 of the enactment of this paragraph,
11 and

12 “(II) during the 4-year period be-
13 ginning on the date that such facility
14 was originally placed in service.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall take effect as if included in section 711
17 of the American Jobs Creation Act of 2004.

18 **SEC. 1348. TEMPORARY REPEAL OF ALTERNATIVE MIN-**
19 **IMUM TAX PREFERENCE FOR INTANGIBLE**
20 **DRILLING COSTS.**

21 (a) IN GENERAL.—Clause (ii) of section 57(a)(2)(E)
22 is amended by adding at the end the following new sen-
23 tence: “The preceding sentence shall not apply to taxable
24 years beginning after December 31, 2005, and before Jan-
25 uary 1, 2008.”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2005.

4 **PART 3—CLEAN COAL INCENTIVES**

5 **SEC. 1351. CREDIT FOR CLEAN COAL TECHNOLOGY UNITS.**

6 (a) IN GENERAL.—Subpart E of part IV of sub-
7 chapter A of chapter 1 (relating to rules for computing
8 investment credit) is amended by inserting after section
9 48 the following new section:

10 **“SEC. 48A. CLEAN COAL TECHNOLOGY CREDIT.**

11 “(a) IN GENERAL.—For purposes of section 46, the
12 clean coal technology credit for any taxable year is an
13 amount equal to the applicable percentage of the basis of
14 qualified clean coal property placed in service during such
15 year.

16 “(b) APPLICABLE PERCENTAGE.—For purposes of
17 this section, the applicable percentage is—

18 “(1) 15 percent in the case of property placed
19 in service in connection with any basic clean coal
20 technology unit, and

21 “(2) 17.5 percent in the case of property placed
22 in service in connection with any advanced clean coal
23 technology unit.

24 “(c) QUALIFIED CLEAN COAL PROPERTY.—For pur-
25 poses of this section—



1 “(1) IN GENERAL.—The term ‘qualified clean
2 coal property’ means section 1245 property—

3 “(A) which is installed in connection
4 with—

5 “(i) an existing coal-based unit as
6 part of the conversion of such unit to any
7 basic or advanced clean coal technology
8 unit, or

9 “(ii) any new advanced clean coal
10 technology unit,

11 “(B) which is placed in service after De-
12 cember 31, 2005, and before—

13 “(i) in the case of property to which
14 subsection (b)(1) applies, January 1, 2014,
15 and

16 “(ii) in the case of property to which
17 subsection (b)(2) applies, January 1, 2017
18 (January 1, 2013, in the case of property
19 installed in connection with an eligible ad-
20 vanced pulverized coal or atmospheric flu-
21 idized bed combustion technology unit),

22 “(C) the original use of which commences
23 with the taxpayer, and

24 “(D) which has a useful life of not less
25 than 4 years.



1 “(2) EXISTING COAL-BASED UNIT.—The term
2 ‘existing coal-based unit’ means a coal-based elec-
3 tricity generating steam generator-turbine unit—

4 “(A) which is not a basic or advanced
5 clean coal technology unit, and

6 “(B) which is in operation on or before
7 January 1, 2006.

8 In the case of a unit being converted to a basic clean
9 coal technology unit, such term shall not include a
10 unit having a nameplate capacity rating of more
11 than 300 megawatts.

12 “(3) NEW ADVANCED CLEAN COAL TECH-
13 NOLOGY UNIT.—The term ‘new advanced clean coal
14 technology unit’ means any advanced clean coal
15 technology unit which is placed in service after De-
16 cember 31, 2005, and the original use of which com-
17 mences with the taxpayer.

18 “(d) BASIC CLEAN COAL TECHNOLOGY UNIT.—For
19 purposes of this section—

20 “(1) IN GENERAL.—The term ‘basic clean coal
21 technology unit’ means a unit which—

22 “(A) uses clean coal technology (including
23 advanced pulverized coal or atmospheric fluid-
24 ized bed combustion, pressurized fluidized bed



1 combustion, and integrated gasification com-
2 bined cycle) for the production of electricity,

3 “(B) uses an input of at least 75 percent
4 coal to produce at least 50 percent of its ther-
5 mal output as electricity,

6 “(C) has a design net heat rate of at least
7 500 less than that of the existing coal-based
8 unit prior to its conversion,

9 “(D) has a maximum design net heat rate
10 of not more than 9,500, and

11 “(E) meets the pollution control require-
12 ments of paragraph (2).

13 Such term shall not include an advanced clean coal
14 technology unit.

15 “(2) POLLUTION CONTROL REQUIREMENTS.—

16 “(A) IN GENERAL.—A unit meets the re-
17 quirements of this paragraph if—

18 “(i) its emissions of sulfur dioxide, ni-
19 trogen oxide, or particulates meet the
20 lower of the emission levels for each such
21 emission specified in—

22 “(I) subparagraph (B), or

23 “(II) the new source performance
24 standards of the Clean Air Act (42
25 U.S.C. 7411) which are in effect for



1 the category of source at the time of
2 the conversion of the unit, and

3 “(ii) its emissions do not exceed any
4 relevant emission level specified by regula-
5 tion pursuant to the hazardous air pollut-
6 ant requirements of the Clean Air Act (42
7 U.S.C. 7412) in effect at the time of the
8 conversion of the unit.

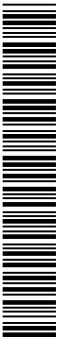
9 “(B) SPECIFIC LEVELS.—The levels speci-
10 fied in this subparagraph are—

11 “(i) in the case of sulfur dioxide emis-
12 sions, 50 percent of the sulfur dioxide
13 emission levels specified in the new source
14 performance standards of the Clean Air
15 Act (42 U.S.C. 7411) in effect on the date
16 of the enactment of this section for the
17 category of source,

18 “(ii) in the case of nitrogen oxide
19 emissions—

20 “(I) 0.1 pound per million Btu of
21 heat input if the unit is not a cyclone-
22 fired boiler, and

23 “(II) if the unit is a cyclone-fired
24 boiler, 15 percent of the uncontrolled



1 nitrogen oxide emissions from such
2 boilers, and

3 “(iii) in the case of particulate emis-
4 sions, 0.02 pound per million Btu of heat
5 input.

6 “(3) DESIGN NET HEAT RATE.—The design net
7 heat rate with respect to any unit, measured in Btu
8 per kilowatt hour (HHV)—

9 “(A) shall be based on the design annual
10 heat input to and the design annual net elec-
11 trical power, fuels, and chemicals output from
12 such unit (determined without regard to such
13 unit’s co-generation of steam),

14 “(B) shall be adjusted for the heat content
15 of the design coal to be used by the unit if it
16 is less than 12,000 Btu per pound according to
17 the following formula:

18 “(C) shall be corrected for the site ref-
19 erence conditions of—

20 “(i) elevation above sea level of 500
21 feet,

22 “(ii) air pressure of 14.4 pounds per
23 square inch absolute (psia),

24 “(iii) temperature, dry bulb of 63°F,



1 “(iv) temperature, wet bulb of 54°F,

2 and

3 “(v) relative humidity of 55 percent,

4 and

5 “(D) if carbon capture controls have been
6 installed with respect to any existing coal-based
7 unit and such controls remove at least 50 per-
8 cent of the unit’s carbon dioxide emissions,
9 shall be adjusted up to the design heat rate
10 level which would have resulted without the in-
11 stallation of such controls.

12 “(4) HHV.—The term ‘HHV’ means higher
13 heating value.

14 “(e) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—
15 For purposes of this section—

16 “(1) IN GENERAL.—The term ‘advanced clean
17 coal technology unit’ means any electricity gener-
18 ating unit of the taxpayer—

19 “(A) which is—

20 “(i) an eligible advanced pulverized
21 coal or atmospheric fluidized bed combus-
22 tion technology unit,

23 “(ii) an eligible pressurized fluidized
24 bed combustion technology unit,



1 “(iii) an eligible integrated gasifi-
2 cation combined cycle technology unit, or

3 “(iv) an eligible other technology unit,
4 “(B) which uses an input of at least 75
5 percent coal to produce at least 50 percent of
6 its thermal output as electricity, and

7 “(C) which meets the carbon emission rate
8 requirements of paragraph (6).

9 “(2) ELIGIBLE ADVANCED PULVERIZED COAL
10 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION
11 TECHNOLOGY UNIT.—The term ‘eligible advanced
12 pulverized coal or atmospheric fluidized bed combus-
13 tion technology unit’ means a clean coal technology
14 unit using advanced pulverized coal or atmospheric
15 fluidized bed combustion technology which has a de-
16 sign net heat rate of not more than 8,500 (8,900 in
17 the case of units placed in service before 2009).

18 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED
19 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-
20 ble pressurized fluidized bed combustion technology
21 unit’ means a clean coal technology unit using pres-
22 surized fluidized bed combustion technology which
23 has a design net heat rate of not more than 7,720
24 (8,900 in the case of units placed in service before



1 2009, and 8,500 in the case of units placed in serv-
2 ice after 2008 and before 2013).

3 “(4) ELIGIBLE INTEGRATED GASIFICATION
4 COMBINED CYCLE TECHNOLOGY UNIT.—The term
5 ‘eligible integrated gasification combined cycle tech-
6 nology unit’ means a clean coal technology unit
7 using integrated gasification combined cycle tech-
8 nology, with or without fuel or chemical co-
9 production—

10 “(A) which has a design net heat rate of
11 not more than 7,720 (8,900 in the case of units
12 placed in service before 2009, and 8,500 in the
13 case of units placed in service after 2008 and
14 before 2013), and

15 “(B) has a net thermal efficiency (HHV)
16 using coal with fuel or chemical co-production
17 of not less than 44.2 percent (38.4 percent in
18 the case of units placed in service before 2009,
19 and 40.2 percent in the case of units placed in
20 service after 2008 and before 2013).

21 “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—
22 The term ‘eligible other technology unit’ means a
23 clean coal technology unit—

24 “(A) which uses any other technology for
25 the production of electricity, and



1 “(B) which has a design net heat rate
2 which meets the requirement of paragraph (2).

3 “(6) CARBON EMISSION RATE REQUIRE-
4 MENTS.—

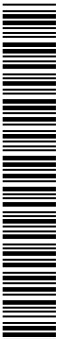
5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), a unit meets the require-
7 ments of this paragraph if—

8 “(i) in the case of a unit using design
9 coal with a heat content of not more than
10 9,000 Btu per pound, the carbon emission
11 rate is less than 0.60 pound of carbon per
12 kilowatt hour, and

13 “(ii) in the case of a unit using design
14 coal with a heat content of more than
15 9,000 Btu per pound, the carbon emission
16 rate is less than 0.54 pound of carbon per
17 kilowatt hour.

18 “(B) ELIGIBLE OTHER TECHNOLOGY
19 UNIT.—In the case of an eligible other tech-
20 nology unit, subparagraph (A) shall be applied
21 by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and
22 ‘0.54’, respectively.

23 “(f) NATIONAL LIMITATIONS ON CREDIT.—For pur-
24 poses of this section—



1 “(1) IN GENERAL.—The amount of credit
2 which would (but for this subsection) be allowed
3 with respect to any property shall not exceed the
4 amount which bears the same ratio to such amount
5 of credit as—

6 “(A) the national megawatt capacity limi-
7 tation allocated to the taxpayer with respect to
8 the basic or advanced clean coal technology unit
9 to which such property relates, bears to

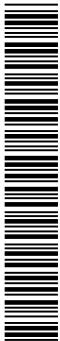
10 “(B) the total megawatt capacity of such
11 unit.

12 The capacity described in subparagraph (B) shall be
13 the reasonably expected capacity after the installa-
14 tion of the property.

15 “(2) AMOUNT OF NATIONAL LIMITATION.—

16 “(A) ADVANCED UNITS.—The national
17 megawatt capacity limitation for advanced clean
18 coal technology units shall be 6,000 megawatts.
19 Of such amount, the national megawatt capac-
20 ity limitation is—

21 “(i) for advanced clean coal tech-
22 nology units using advanced pulverized
23 coal or atmospheric fluidized bed combus-
24 tion technology, not more than 1,500
25 megawatts (not more than 750 megawatts



1 in the case of units placed in service before
2 2009),

3 “(ii) for such units using pressurized
4 fluidized bed combustion technology, not
5 more than 750 megawatts (not more than
6 375 megawatts in the case of units placed
7 in service before 2009),

8 “(iii) for such units using integrated
9 gasification combined cycle technology,
10 with or without fuel or chemical co-produc-
11 tion, not more than 3,000 megawatts (not
12 more than 1,250 megawatts in the case of
13 units placed in service before 2009), and

14 “(iv) for such units using other tech-
15 nology for the production of electricity, not
16 more than 750 megawatts (not more than
17 375 megawatts in the case of units placed
18 in service before 2009).

19 “(B) BASIC UNITS.—The national mega-
20 watt capacity limitation for basic clean coal
21 technology units shall be 4,000 megawatts.

22 “(3) ALLOCATION OF LIMITATION.—The Sec-
23 retary shall allocate the national megawatt capacity
24 limitations in such manner as the Secretary may
25 prescribe, except that the Secretary may not allocate



1 more than 300 megawatts to any basic clean coal
2 technology unit.

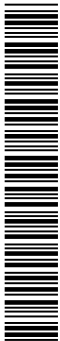
3 “(4) REGULATIONS.—Not later than 6 months
4 after the date of the enactment of this section, the
5 Secretary shall prescribe such regulations as may be
6 necessary or appropriate to carry out the purposes
7 of this subsection. Such regulations shall provide a
8 certification process under which the Secretary, after
9 consultation with the Secretary of Energy, shall ap-
10 prove and allocate the national megawatt capacity
11 limitations—

12 “(A) to encourage that units with the high-
13 est thermal efficiencies, when adjusted for the
14 heat content of the design coal and site ref-
15 erence conditions, and environmental perform-
16 ance, be placed in service as soon as possible,
17 and

18 “(B) to allocate capacity to taxpayers
19 which have a definite and credible plan for plac-
20 ing into commercial operation a basic or ad-
21 vanced clean coal technology unit, including—

22 “(i) a site,

23 “(ii) contractual commitments for
24 procurement and construction or, in the



1 case of regulated utilities, the agreement of
2 the State utility commission,

3 “(iii) filings for all necessary
4 preconstruction approvals,

5 “(iv) a demonstrated record of having
6 successfully completed comparable projects
7 on a timely basis, and

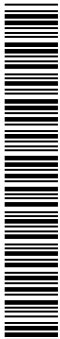
8 “(v) such other factors which the Sec-
9 retary determines are appropriate.

10 “(g) SPECIAL RULES.—For purposes of this
11 section—

12 “(1) CERTAIN PROGRESS EXPENDITURE RULES
13 MADE APPLICABLE.—Rules similar to the rules of
14 subsections (c)(4) and (d) of section 46 (as in effect
15 on the day before the date of the enactment of the
16 Revenue Reconciliation Act of 1990) shall apply for
17 purposes of this section.

18 “(2) PROPERTY FINANCED BY SUBSIDIZED FI-
19 NANCING OR INDUSTRIAL DEVELOPMENT BONDS.—
20 Rules similar to the rules of section 45(b)(3) shall
21 apply for purposes of this section.

22 “(3) NONCOMPLIANCE WITH POLLUTION
23 LAWS.—The terms ‘basic clean coal technology unit’
24 and ‘advanced clean coal technology unit’ shall not
25 include any unit which is not in compliance with the



1 applicable Federal pollution prevention, control, and
2 permit requirements at any time during the period
3 applicable under subsection (c)(1)(B).

4 “(4) DENIAL OF CREDIT FOR UNITS RECEIVING
5 CERTAIN OTHER FEDERAL ASSISTANCE.—The terms
6 ‘basic clean coal technology unit’ and ‘advanced
7 clean coal technology unit’ shall not include any unit
8 if, at any time during the period applicable under
9 subsection (c)(1)(B), any funding is provided to such
10 unit under the Clean Coal Technology Program, the
11 Power Plant Improvement Initiative, or the Clean
12 Coal Power Initiative administered by the Secretary
13 of Energy.

14 “(5) COORDINATION WITH OTHER CREDITS.—
15 This section shall not apply to any property with re-
16 spect to which the rehabilitation credit under section
17 47, the energy credit under section 48, or any credit
18 under section 45 or 45K is allowable unless the tax-
19 payer elects to waive the application of such credit
20 to such property.”.

21 (b) SPECIAL RECAPTURE RULES.—

22 (1) Subsection (a) of section 50 is amended by
23 redesignating paragraph (3), (4), and (5) as para-
24 graphs (4), (5), and (6), respectively, and by insert-



1 ing after paragraph (2) the following new para-
2 graph:

3 “(3) SPECIAL RULES FOR CLEAN COAL TECH-
4 NOLOGY CREDITS.—

5 “(A) EARLY DISPOSITION, ETC.—If, dur-
6 ing any taxable year, qualified clean coal prop-
7 erty is disposed of, or otherwise ceases to be
8 part of a basic or advanced clean coal tech-
9 nology unit with respect to the taxpayer, before
10 the close of the recovery period under section
11 168 for such unit, then the tax under this chap-
12 ter for such taxable year shall be increased
13 by—

14 “(i) the aggregate decrease in the
15 credits allowed under section 38 for all
16 prior taxable years which would have re-
17 sulted solely from reducing to zero any
18 credit determined under section 48A with
19 respect to such property, multiplied by

20 “(ii) a fraction—

21 “(I) the numerator of which is
22 the number of years in the period be-
23 ginning with the year of such disposi-
24 tion or cessation and ending with the
25 last year of such recovery period, and



1 “(II) the denominator of which is
2 the total number of years in such re-
3 covery period.

4 “(B) PROPERTY CEASES TO QUALIFY FOR
5 PROGRESS EXPENDITURES.—Rules similar to
6 the rules of this paragraph shall apply in cases
7 where qualified progress expenditures were
8 taken into account under the rules referred to
9 in section 48A(g)(1).

10 “(C) INCREASED RECAPTURE IN CERTAIN
11 CASES.—The fraction in subparagraph (A)(ii)
12 shall be 1 in any case in which the property
13 ceases to be a basic or advanced clean coal
14 technology unit by reason of paragraph (3), (4),
15 or (5) of section 48A(g).

16 “(D) COORDINATION WITH OTHER RECAP-
17 TURE RULES.—Paragraphs (1) and (2) shall
18 not apply to qualified clean coal property.

19 “(E) DEFINITIONS.—Terms used in this
20 section which are also used in section 48A shall
21 have the meanings given to such terms in sec-
22 tion 48A.”.

23 (2) Paragraph (4) of section 50(a), as redesign-
24 nated by paragraph (1), is amended by striking “or
25 (2)” and inserting “, (2), or (3)”.



1 (3) Paragraph (5) of section 50(a), as so reded-
2 igned, is amended by striking “and (2)” and in-
3 serting “, (2), and (3)”.

4 (4) Section 1371(d)(1) is amended by striking
5 “section 50(a)(4)” and inserting “section 50(a)(5)”.

6 (c) TECHNICAL AMENDMENTS.—

7 (1) Section 46 (relating to amount of credit) is
8 amended by striking “and” at the end of paragraph
9 (2), by striking the period at the end of paragraph
10 (3) and inserting “, and”, and by adding at the end
11 the following new paragraph:

12 “(4) the clean coal technology credit.”.

13 (2) Section 49(a)(1)(C) is amended by striking
14 “and” at the end of clause (ii), by striking the pe-
15 riod at the end of clause (iii) and inserting “, and”,
16 and by adding at the end the following new clause:

17 “(iv) the portion of the basis of any
18 qualified clean coal property (as defined by
19 section 48A(c)).”.

20 (3) The table of sections for subpart E of part
21 IV of subchapter A of chapter 1 is amended by in-
22 serting after the item relating to section 48 the fol-
23 lowing new item:

“Sec. 48A. Clean coal technology credit.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to periods after December 31,



1 2005, under rules similar to the rules of section 48(m)
2 of the Internal Revenue Code of 1986 (as in effect on the
3 day before the date of the enactment of the Revenue Rec-
4 onciliation Act of 1990).

5 **SEC. 1352. EXPANSION OF AMORTIZATION FOR CERTAIN**
6 **POLLUTION CONTROL FACILITIES.**

7 (a) ELIGIBILITY OF POST-1975 POLLUTION CON-
8 TROL FACILITIES.—

9 (1) IN GENERAL.—Paragraph (1) of section
10 169(d) is amended by striking “before January 1,
11 1976,” and by striking “a new identifiable” and in-
12 serting “an identifiable”.

13 (2) IDENTIFIABLE TREATMENT FACILITY.—
14 Paragraph (4) of section 169(d) is amended to read
15 as follows:

16 “(4) IDENTIFIABLE TREATMENT FACILITY.—
17 For purposes of paragraph (1), the term ‘identifiable
18 treatment facility’ includes only tangible property
19 (not including a building and its structural compo-
20 nents, other than a building which is exclusively a
21 treatment facility) which is of a character subject to
22 the allowance for depreciation provided in section
23 167, which is identifiable as a treatment facility, and
24 which is property—



1 “(A) the construction, reconstruction, or
2 erection of which is completed by the taxpayer,
3 or

4 “(B) the original use of the property com-
5 mences with the taxpayer.”.

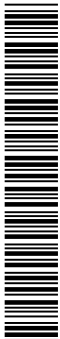
6 (3) TECHNICAL AMENDMENT.—Section
7 169(d)(3) is amended by striking “Health, Edu-
8 cation, and Welfare” and inserting “Health and
9 Human Services”.

10 (b) COORDINATION WITH SECTION 48A INVEST-
11 MENT CREDIT.—Section 169 is amended by redesignating
12 subsections (e) through (j) as subsection (f) through (k),
13 respectively, and by inserting after subsection (d) the fol-
14 lowing new subsection:

15 “(e) COORDINATION WITH SECTION 48A INVEST-
16 MENT CREDIT.—

17 “(1) IN GENERAL.—In the case of any treat-
18 ment facility used in connection with a plant or
19 other property to which an amount is allocated
20 under section 48A(f), this section shall apply only if
21 such plant or other property was in operation before
22 January 1, 1976.

23 “(2) 36-MONTH AMORTIZATION WITH RESPECT
24 TO PRE-1976 PLANTS NOT ALLOCATED CREDIT.—
25 References in this section to 60 months shall be



1 treated as references to 36 months in the case of
2 treatment facilities used in connection with a plant
3 or other property in operation before January 1,
4 1976, if no allocation is made under section 48A(f)
5 with respect to such plant or property.”.

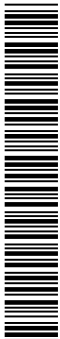
6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to facilities placed in service after
8 the date of the enactment of this Act.

9 **SEC. 1353. 5-YEAR RECOVERY PERIOD FOR ELIGIBLE INTE-**
10 **GRATED GASIFICATION COMBINED CYCLE**
11 **TECHNOLOGY UNIT ELIGIBLE FOR CREDIT.**

12 (a) IN GENERAL.—Subparagraph (B) of section
13 168(e)(3) (defining 5-year property) is amended by strik-
14 ing “and” at the end of clause (v), by striking the period
15 at the end of clause (vi) and inserting “, and”, and by
16 inserting after clause (vi) the following new clause:

17 “(vii) any section 1245 property
18 which is part of an eligible integrated gas-
19 ification combined cycle technology unit (as
20 defined in section 48A(e)(4)) for which an
21 allocation is made under section 48A(f).”.

22 (b) ALTERNATIVE SYSTEM.—The table contained in
23 section 168(g)(3)(B) (relating to special rule for certain
24 property assigned to classes) is amended by inserting after



1 the item relating to subparagraph (B)(iii) the following
2 new item:

“(B) (vii) 20”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service after
5 the date of the enactment of this Act in taxable years end-
6 ing after such date.

7 **PART IV—HIGH VOLUME NATURAL GAS**
8 **PROVISIONS**

9 **SEC. 1355. HIGH VOLUME NATURAL GAS PIPE TREATED AS**
10 **7-YEAR PROPERTY.**

[Note: Enacted by section 706 of the American Jobs
Creation Act of 2004]

11 **SEC. 1356. EXTENSION OF ENHANCED OIL RECOVERY**
12 **CREDIT TO HIGH VOLUME NATURAL GAS FA-**
13 **CILITIES.**

[Note: Enacted by section 707 of the American Jobs
Creation Act of 2004]

14 **Subtitle D—Additional Provisions**

15 **SEC. 1361. EXTENSION OF ACCELERATED DEPRECIATION**
16 **BENEFIT FOR ENERGY-RELATED BUSINESSES**
17 **ON INDIAN RESERVATIONS.**

18 Paragraph (8) of section 168(j) (relating to termi-
19 nation) is amended by adding at the end the following new
20 sentence: “The preceding sentence shall be applied by sub-
21 stituting “December 31, 2005” for “December 31, 2004”



1 in the case of property placed in service as part of a facil-
2 ity for—

3 “(A) the generation or transmission of
4 electricity (including from any qualified energy
5 resource, as defined in section 45(c)),

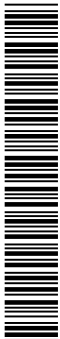
6 “(B) an oil or gas well,

7 “(C) the transmission or refining of oil or
8 gas, or

9 “(D) the production of any qualified fuel
10 (as defined in section 45K(c)).”.

11 **SEC. 1362. PAYMENT OF DIVIDENDS ON STOCK OF CO-**
12 **OPERATIVES WITHOUT REDUCING PATRON-**
13 **AGE DIVIDENDS.**

14 (a) IN GENERAL.—Subsection (a) of section 1388
15 (relating to patronage dividend defined) is amended by
16 adding at the end the following: “For purposes of para-
17 graph (3), net earnings shall not be reduced by amounts
18 paid during the year as dividends on capital stock or other
19 proprietary capital interests of the organization to the ex-
20 tent that the articles of incorporation or bylaws of such
21 organization or other contract with patrons provide that
22 such dividends are in addition to amounts otherwise pay-
23 able to patrons which are derived from business done with
24 or for patrons during the taxable year.”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to distributions in taxable years
3 ending after the date of the enactment of this Act.

4 **SEC. 1363. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**
5 **NEERSHIPS TREATED AS QUALIFYING INCOME**
6 **OF REGULATED INVESTMENT COMPANIES.**

7 (a) IN GENERAL.—Paragraph (2) of section 851(b)
8 (defining regulated investment company) is amended to
9 read as follows:

10 “(2) at least 90 percent of its gross income is
11 derived from—

12 “(A) dividends, interest, payments with re-
13 spect to securities loans (as defined in section
14 512(a)(5)), and gains from the sale or other
15 disposition of stock or securities (as defined in
16 section 2(a)(36) of the Investment Company
17 Act of 1940, as amended) or foreign currencies,
18 or other income (including but not limited to
19 gains from options, futures or forward con-
20 tracts) derived with respect to its business of
21 investing in such stock, securities, or currencies,
22 and

23 “(B) distributions or other income derived
24 from an interest in a qualified publicly traded



1 partnership (as defined in subsection (h));
2 and”.

3 (b) SOURCE FLOW-THROUGH RULE NOT TO
4 APPLY.—The last sentence of section 851(b) is amended
5 by inserting “(other than a qualified publicly traded part-
6 nership as defined in subsection (h))” after “derived from
7 a partnership”.

8 (c) LIMITATION ON OWNERSHIP.—Subsection (c) of
9 section 851 is amended by redesignating paragraph (5)
10 as paragraph (6) and inserting after paragraph (4) the
11 following new paragraph:

12 “(5) The term ‘outstanding voting securities of
13 such issuer’ shall include the equity securities of a
14 qualified publicly traded partnership (as defined in
15 subsection (h)).”.

16 (d) DEFINITION OF QUALIFIED PUBLICLY TRADED
17 PARTNERSHIP.—Section 851 is amended by adding at the
18 end the following new subsection:

19 “(h) QUALIFIED PUBLICLY TRADED PARTNER-
20 SHIP.—For purposes of this section, the term ‘qualified
21 publicly traded partnership’ means a publicly traded part-
22 nership described in section 7704(b) other than a partner-
23 ship which would satisfy the gross income requirements
24 of section 7704(c)(2) if qualifying income included only
25 income described in subsection (b)(2)(A).”.



1 (e) DEFINITION OF QUALIFYING INCOME.—Section
2 7704(d)(4) is amended by striking “section 851(b)(2)”
3 and inserting “section 851(b)(2)(A)”.

4 (f) LIMITATION ON COMPOSITION OF ASSETS.—Sub-
5 paragraph (B) of section 851(b)(3) is amended to read
6 as follows:

7 “(B) not more than 25 percent of the
8 value of its total assets is invested in—

9 “(i) the securities (other than Govern-
10 ment securities or the securities of other
11 regulated investment companies) of any
12 one issuer,

13 “(ii) the securities (other than the se-
14 curities of other regulated investment com-
15 panies) of two or more issuers which the
16 taxpayer controls and which are deter-
17 mined, under regulations prescribed by the
18 Secretary, to be engaged in the same or
19 similar trades or businesses or related
20 trades or businesses, or

21 “(iii) the securities of one or more
22 qualified publicly traded partnerships (as
23 defined in subsection (h)).”.

24 (g) APPLICATION OF SPECIAL PASSIVE ACTIVITY
25 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-



1 section (k) of section 469 (relating to separate application
 2 of section in case of publicly traded partnerships) is
 3 amended by adding at the end the following new para-
 4 graph:

5 “(4) APPLICATION TO REGULATED INVEST-
 6 MENT COMPANIES.—For purposes of this section, a
 7 regulated investment company (as defined in section
 8 851) holding an interest in a qualified publicly trad-
 9 ed partnership (as defined in section 851(h)) shall
 10 be treated as a taxpayer described in subsection
 11 (a)(2) with respect to items attributable to such in-
 12 terest.”.

13 (h) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 the date of the enactment of this Act.

16 **SEC. 1364. CEILING FANS.**

17 (a) REENACTMENT OF SECTION 713 OF THE AMER-
 18 ICAN JOBS CREATION ACT OF 2004.—The item in sub-
 19 chapter II of chapter 99 of the Harmonized Tariff Sched-
 20 ule of the United States relating to 9902.84.14 is amend-
 21 ed to read as follows:

“	9902.84.14	Ceiling fans for permanent installation (provided for in subheading 8414.51.00)	Free	No change	No change	On or before 12/31/2006	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall take effect as if included in section 713
 3 of the American Jobs Creation Act of 2004.

4 **SEC. 1365. CERTAIN STEAM GENERATORS, AND CERTAIN**
 5 **REACTOR VESSEL HEADS, USED IN NUCLEAR**
 6 **FACILITIES.**

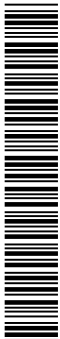
7 (a) REENACTMENT OF SECTION 714 OF THE AMER-
 8 ICAN JOBS CREATION ACT OF 2004.—

9 (1) Heading 9902.84.02 of the Harmonized
 10 Tariff Schedule of the United States is amended by
 11 striking “12/31/2008” and inserting “12/31/2008”.

12 (2) The item in subchapter II of chapter 99 of
 13 the Harmonized Tariff Schedule of the United
 14 States relating to 9902.84.03 is amended to read as
 15 follows:

“	9902.84.03	Reactor vessel heads for nuclear reactors (provided for in subheading 8401.40.00) ..	Free	No change	No change	On or before 12/31/2008	”.
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16 (b) EFFECTIVE DATE.—The amendments made by
 17 this section shall take effect as if included in the amend-
 18 ments made by section 714 of the American Jobs Creation
 19 Act of 2004.



1 **SEC. 1366. BROWNFIELDS DEMONSTRATION PROGRAM FOR**
2 **QUALIFIED GREEN BUILDING AND SUSTAIN-**
3 **ABLE DESIGN PROJECTS.**

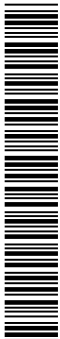
4 (a) REENACTMENT OF SECTION 701 OF THE AMER-
5 ICAN JOBS CREATION ACT OF 2004.—Subsection (l) of
6 section 142 (relating to exempt facility bonds) is amended
7 to read as follows:

8 “(l) QUALIFIED GREEN BUILDING AND SUSTAIN-
9 ABLE DESIGN PROJECTS.—

10 “(1) IN GENERAL.—For purposes of subsection
11 (a)(14), the term ‘qualified green building and sus-
12 tainable design project’ means any project which is
13 designated by the Secretary, after consultation with
14 the Administrator of the Environmental Protection
15 Agency, as a qualified green building and sustain-
16 able design project and which meets the require-
17 ments of clauses (i), (ii), (iii), and (iv) of paragraph
18 (4)(A).

19 “(2) DESIGNATIONS.—

20 “(A) IN GENERAL.—Within 60 days after
21 the end of the application period described in
22 paragraph (3)(A), the Secretary, after consulta-
23 tion with the Administrator of the Environ-
24 mental Protection Agency, shall designate quali-
25 fied green building and sustainable design
26 projects. At least one of the projects designated



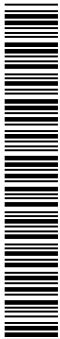
1 shall be located in, or within a 10-mile radius
2 of, an empowerment zone as designated pursu-
3 ant to section 1391, and at least one of the
4 projects designated shall be located in a rural
5 State. No more than one project shall be des-
6 ignated in a State. A project shall not be des-
7 ignated if such project includes a stadium or
8 arena for professional sports exhibitions or
9 games.

10 “(B) MINIMUM CONSERVATION AND TECH-
11 NOLOGY INNOVATION OBJECTIVES.—The Sec-
12 retary, after consultation with the Adminis-
13 trator of the Environmental Protection Agency,
14 shall ensure that, in the aggregate, the projects
15 designated shall—

16 “(i) reduce electric consumption by
17 more than 150 megawatts annually as
18 compared to conventional generation,

19 “(ii) reduce daily sulfur dioxide emis-
20 sions by at least 10 tons compared to coal
21 generation power,

22 “(iii) expand by 75 percent the do-
23 mestic solar photovoltaic market in the
24 United States (measured in megawatts) as



1 compared to the expansion of that market
2 from 2001 to 2002, and

3 “(iv) use at least 25 megawatts of
4 fuel cell energy generation.

5 “(3) LIMITED DESIGNATIONS.—A project may
6 not be designated under this subsection unless—

7 “(A) the project is nominated by a State
8 or local government within 180 days of the en-
9 actment of this subsection, and

10 “(B) such State or local government pro-
11 vides written assurances that the project will
12 satisfy the eligibility criteria described in para-
13 graph (4).

14 “(4) APPLICATION.—

15 “(A) IN GENERAL.—A project may not be
16 designated under this subsection unless the ap-
17 plication for such designation includes a project
18 proposal which describes the energy efficiency,
19 renewable energy, and sustainable design fea-
20 tures of the project and demonstrates that the
21 project satisfies the following eligibility criteria:

22 “(i) GREEN BUILDING AND SUSTAIN-
23 ABLE DESIGN.—At least 75 percent of the
24 square footage of commercial buildings
25 which are part of the project is registered



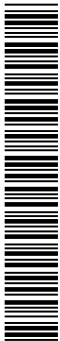
1 for United States Green Building Council's
2 LEED certification and is reasonably ex-
3 pected (at the time of the designation) to
4 receive such certification. For purposes of
5 determining LEED certification as re-
6 quired under this clause, points shall be
7 credited by using the following:

8 “(I) For wood products, certifi-
9 cation under the Sustainable Forestry
10 Initiative Program and the American
11 Tree Farm System.

12 “(II) For renewable wood prod-
13 ucts, as credited for recycled content
14 otherwise provided under LEED cer-
15 tification.

16 “(III) For composite wood prod-
17 ucts, certification under standards es-
18 tablished by the American National
19 Standards Institute, or such other vol-
20 untary standards as published in the
21 Federal Register by the Administrator
22 of the Environmental Protection
23 Agency.

24 “(ii) BROWNFIELD REDEVELOP-
25 MENT.—The project includes a brownfield



1 site as defined by section 101(39) of the
2 Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980
4 (42 U.S.C. 9601), including a site de-
5 scribed in subparagraph (D)(ii)(II)(aa)
6 thereof.

7 “(iii) STATE AND LOCAL SUPPORT.—
8 The project receives specific State or local
9 government resources which will support
10 the project in an amount equal to at least
11 \$5,000,000. For purposes of the preceding
12 sentence, the term ‘resources’ includes tax
13 abatement benefits and contributions in
14 kind.

15 “(iv) SIZE.—The project includes at
16 least one of the following:

17 “(I) At least 1,000,000 square
18 feet of building.

19 “(II) At least 20 acres.

20 “(v) USE OF TAX BENEFIT.—The
21 project proposal includes a description of
22 the net benefit of the tax-exempt financing
23 provided under this subsection which will
24 be allocated for financing of one or more
25 of the following:



1 “(I) The purchase, construction,
2 integration, or other use of energy ef-
3 ficiency, renewable energy, and sus-
4 tainable design features of the project.

5 “(II) Compliance with certifi-
6 cation standards cited under clause
7 (i).

8 “(III) The purchase, remediation,
9 and foundation construction and prep-
10 aration of the brownfields site.

11 “(vi) PROHIBITED FACILITIES.—An
12 issue shall not be treated as an issue de-
13 scribed in subsection (a)(14) if any pro-
14 ceeds of such issue are used to provide any
15 facility the principal business of which is
16 the sale of food or alcoholic beverages for
17 consumption on the premises.

18 “(vii) EMPLOYMENT.—The project is
19 projected to provide permanent employ-
20 ment of at least 1,500 full time equivalents
21 (150 full time equivalents in rural States)
22 when completed and construction employ-
23 ment of at least 1,000 full time equivalents
24 (100 full time equivalents in rural States).



1 The application shall include an independent
2 analysis which describes the project's economic
3 impact, including the amount of projected em-
4 ployment.

5 “(B) PROJECT DESCRIPTION.—Each appli-
6 cation described in subparagraph (A) shall con-
7 tain for each project a description of—

8 “(i) the amount of electric consump-
9 tion reduced as compared to conventional
10 construction,

11 “(ii) the amount of sulfur dioxide
12 daily emissions reduced compared to coal
13 generation,

14 “(iii) the amount of the gross in-
15 stalled capacity of the project's solar pho-
16 tovoltaic capacity measured in megawatts,
17 and

18 “(iv) the amount, in megawatts, of
19 the project's fuel cell energy generation.

20 “(5) CERTIFICATION OF USE OF TAX BEN-
21 EFIT.—No later than 30 days after the completion
22 of the project, each project must certify to the Sec-
23 retary that the net benefit of the tax-exempt financ-
24 ing was used for the purposes described in para-
25 graph (4).



1 “(6) DEFINITIONS.—For purposes of this
2 subsection—

3 “(A) RURAL STATE.—The term ‘rural
4 State’ means any State which has—

5 “(i) a population of less than
6 4,500,000 according to the 2000 census,

7 “(ii) a population density of less than
8 150 people per square mile according to
9 the 2000 census, and

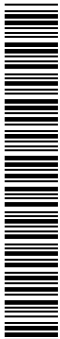
10 “(iii) increased in population by less
11 than half the rate of the national increase
12 between the 1990 and 2000 censuses.

13 “(B) LOCAL GOVERNMENT.—The term
14 ‘local government’ has the meaning given such
15 term by section 1393(a)(5).

16 “(C) NET BENEFIT OF TAX-EXEMPT FI-
17 NANCING.—The term ‘net benefit of tax-exempt
18 financing’ means the present value of the inter-
19 est savings (determined by a calculation estab-
20 lished by the Secretary) which result from the
21 tax-exempt status of the bonds.

22 “(7) AGGREGATE FACE AMOUNT OF TAX-EX-
23 EMPT FINANCING.—

24 “(A) IN GENERAL.—An issue shall not be
25 treated as an issue described in subsection



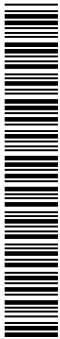
1 (a)(14) if the aggregate face amount of bonds
2 issued by the State or local government pursu-
3 ant thereto for a project (when added to the ag-
4 gregate face amount of bonds previously so
5 issued for such project) exceeds an amount des-
6 ignated by the Secretary as part of the designa-
7 tion.

8 “(B) LIMITATION ON AMOUNT OF
9 BONDS.—The Secretary may not allocate au-
10 thority to issue qualified green building and
11 sustainable design project bonds in an aggre-
12 gate face amount exceeding \$2,000,000,000.

13 “(8) TERMINATION.—Subsection (a)(14) shall
14 not apply with respect to any bond issued after Sep-
15 tember 30, 2009.

16 “(9) TREATMENT OF CURRENT REFUNDING
17 BONDS.—Paragraphs (7)(B) and (8) shall not apply
18 to any bond (or series of bonds) issued to refund a
19 bond issued under subsection (a)(14) before October
20 1, 2009, if—

21 “(A) the average maturity date of the issue
22 of which the refunding bond is a part is not
23 later than the average maturity date of the
24 bonds to be refunded by such issue,



1 “(B) the amount of the refunding bond
2 does not exceed the outstanding amount of the
3 refunded bond, and

4 “(C) the net proceeds of the refunding
5 bond are used to redeem the refunded bond not
6 later than 90 days after the date of the
7 issuance of the refunding bond.

8 For purposes of subparagraph (A), average maturity
9 shall be determined in accordance with section
10 147(b)(2)(A).”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall take effect as if included in the amend-
13 ments made by section 701 of the American Jobs Creation
14 Act of 2004.

